

LEGISLATIVE AUDIT REPORT

West Virginia Department of Environmental Protection
Division of Land Restoration

FOR THE FISCAL YEARS JULY 1, 2006 - JUNE 30, 2008

AUDIT SCOPE:

REVIEW OF INTERNAL CONTROL AND COMPLIANCE WITH LAWS, REGULATIONS, AND PROVISIONS OF CONTRACT AGREEMENTS APPLICABLE TO :

- a) revenues in DLR Funds 3217, 3255, 3347, 3485, 3486 (internal control only), 3487, & 3488 during fiscal years 2007 & 2008
- b) investment earnings for 3217, 3255, 3347, 3484, 3485, 3486, 3487, & 3488 during fiscal years 2007-2010,
- c) expenditures for general purchases, travel, reclamation of non-state property, hospitality, advertising & promotional, grants, maintenance contracts, miscellaneous, and rentals/leases for all DLR funds except 3312, 3317, 3321, 3345, & 8796 during fiscal years 2007-2009
- d) personal services (payroll transfers, leave, increment, & separation pay) for all DLR Funds including 3312, 3317, 3321, 3345, & 8796 during fiscal years 2007-2009
- e) audit of vehicles for the agency as a whole
 - * vehicle premiums, violations, & accidents during fiscal years 2005-2009
 - * vehicle rentals and DEP owned vehicles as of November 2009, and
 - * vehicle repairs for July 1, 2006 - March 3, 2010



WEST VIRGINIA LEGISLATIVE AUDITOR
POST AUDIT DIVISION



Aaron Allred - *Legislative Auditor*
Stacy Sneed, CPA - *Director*

Room 329 W, Building I
1900 Kanawha Boulevard East
Charleston, West Virginia 25305
phone: (304) 347-4880

LEGISLATIVE POST AUDIT SUBCOMMITTEE

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Walt Helmick
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**WEST VIRGINIA LEGISLATIVE AUDITOR
LEGISLATIVE POST AUDIT DIVISION**

Aaron Allred
Legislative Auditor

Stacy L. Sneed, CPA, CICA
Director

Ethelbert Scott, CPA
Jean Krebs, CPA, CICA
Audit Managers

Amber Shirkey, CPA
India Welder, CICA
Thomas Ward, CPA, CMA
Auditors-in-Charge

Sheela Francis, Auditor II
Joshua Potter, Auditor I
Ron Ash, Auditor II
Jay Eckhart, Auditor I

Edwina Broadway, Auditor I
Erin Hardy, Auditor II
Anna Johnson, Auditor II
Damon Iarossi, Auditor I

Staff Auditors

Legislative Post Audit Division
Building 1, Room W-329
1900 Kanawha Blvd., East
Charleston, WV 25305-0610
(304) 347-4880

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WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
1900 Kanawha Blvd., E.
Charleston, West Virginia 25305-0610



Area Code (304)
Phone: 347-4880
Fax: 347-4889

The Joint Committee on Government and Finance:

In compliance with the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, we conducted a post audit of the West Virginia Department of Environmental Protection (DEP), Division of Land Restoration (DLR) for the period July 1, 2006 through June 30, 2008. Any deviations from the audit period or from DLR funds are described in the Scope section. We conducted our audit in accordance with auditing standards generally accepted in the United States of America except for the organizational independence impairment discussed in the Opinion section of the Independent Auditor's Report.

Our audit disclosed certain findings which are detailed in this report. With the exception of personal services, the remaining revenues and expenditures for the Special Reclamation Funds (3312, 3317, 3321, and 3345) and the Acid Mine Drainage Abatement and Treatment Fund (8796) will be reported on separately at a later date. Findings that were deemed inconsequential to the financial operations of the agency were discussed with management. The Spending Unit's management has responded to the audit findings; we have included the responses following each finding.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stacy L. Sneed".

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF LAND RESTORATION
JULY 1, 2006 – JUNE 30, 2008**

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**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF LAND RESTORATION
JULY 1, 2006 – JUNE 30, 2008**

INDEPENDENT AUDITOR'S REPORT

Post Audit Subcommittee:

Compliance

We have audited the Department of Environmental Protection (hereafter referred to as DEP), Division of Land Restoration's (hereafter referred to as DLR) compliance with the laws, rules, and regulations applicable to (a) revenues in DLR Funds 3217, 3255, 3347, 3484, 3485, 3486, 3487 (internal control only – the post audit of DWWM is testing Revenue Code 689 during the audit of the solid waste assessment fee), & 3488 during fiscal years 2007 & 2008, (b) investment earnings for DLR Funds 3217, 3255, 3347, 3484, 3485, 3486, 3487, & 3488 during fiscal years 2007-2010, (c) expenditures for general purchases, travel, reclamation of non-State property, hospitality, advertising & promotional, grants, maintenance contracts, miscellaneous, and rentals/leases for all DLR funds except Funds 3312, 3317, 3321, 3345, & 8796 during fiscal years 2007-2009, (d) personal services expenditures (payroll, payroll transfers, leave, increment, & separation pay) for all DLR Funds including 3312, 3317, 3321, 3345, & 8796 during fiscal years 2007-2009. With the exception of personal services, revenues and expenditures for DLR Funds 3312, 3317, 3321, 3345, & 8796 will be reported on separately at a later date. Our audit of vehicles for the agency as a whole was as follows: (a) vehicle premiums, violations, & accidents during fiscal years 2005-2009, (b) vehicle rentals and DEP-owned vehicles as of November 2009, and (c) vehicle repairs for July 1, 2006 – March 3, 2010. Compliance with the requirements referred to above is the responsibility of DEP's management. Our responsibility is to express an opinion on DEP's compliance based on our audit.

Except for the organizational impairment described in the following paragraph, we conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the compliance requirements referred to above could have a material effect on DEP. An audit includes examining, on a test basis, evidence about DEP's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion. Our audit does not provide a legal determination of DEP's compliance with those requirements.

In accordance with W. Va. Code Chapter 4, Article 2, the Post Audit Division is required to conduct post audits of the revenues and expenditures of the spending units of the state government. The Post Audit Division is organized under the Legislative Branch of the State and our audits are reported to the Legislative Post Audit Subcommittee. Therefore, the Division has historically been organizationally independent when audits are performed on an agency, board, or program of the Executive Branch of the State. However, this organizational independence was impaired when the President of the Senate became acting Governor of the State on November 15, 2010, in accordance with W.Va. Code §3-10-2. Audits completed after this date will not comply with auditing standards generally accepted in the United States in regards to organizational independence. Since the President of the Senate is acting Governor, the Executive Branch has the ability to influence the initiation, scope, timing, and completion of any audit. The Executive Branch could also obstruct audit reporting, including the findings and conclusions or the manner, means, or timing of the audit organization's reports.

In our opinion, except for the noncompliance noted in the findings of this report and the inconsequential items discussed with management, DEP complied, in all material respects, with the compliance requirements referred to above that are applicable during fiscal years 2007 and 2008 and any other time periods mentioned in the Audit Scope section.

Internal Control

Management of DEP is responsible for establishing and maintaining effective internal control over compliance with the compliance requirements referred to above. In planning and performing our audit, we considered DEP's internal control over compliance to determine the auditing procedures for the purpose of expressing our opinion on compliance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the DEP's internal control over compliance.

A deficiency in internal control over compliance exists when the design or operation of a control does not allow management or employees, in the normal course of performing their functions, to prevent, or detect and correct, noncompliance on a timely basis. *A material weakness* in internal control over compliance is a deficiency, or combination of deficiencies in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a compliance requirement will not be prevented, or detected and corrected, on a timely basis. We consider Findings 1 and 2 to be material weaknesses in internal control over compliance.

A significant deficiency in internal control over compliance is a deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider Findings 3 and 4 to be significant deficiencies in internal control over compliance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be deficiencies, significant deficiencies, or material weaknesses in internal control over compliance.

This communication is intended solely for the information and use of the Post Audit Subcommittee, the members of the WV Legislature, and management of WVDEP-DLR. However, once released by the Post Audit Subcommittee, this report is a matter of public record and its distribution is not limited.

Respectfully submitted,

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division

December 22, 2010

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF LAND RESTORATION
JULY 1, 2006 – JUNE 30, 2008**

EXECUTIVE SUMMARY

Informational Item 1 No Audit of the Environmental Resources Information System (ERIS) Database

- During our Post Audit of the DEP-DLR, we noted DEP relied heavily on the Environmental Resources Information System (ERIS) to track incoming revenues, billings, permitting, reclamation, and employee timekeeping & leave. ERIS was created as an information system only and was never meant to be an accounting system. However, DEP has adopted ERIS as the official accounting record. Throughout the audit we noted major problem areas within ERIS.

Auditor's Recommendation

We recommend DEP hire an outside auditor who specializes in information technology auditing and provide a copy of the final audit report and DEP's plan of corrective action to the Legislative Post Audit Division.

Spending Unit's Response

The agency agrees that the Environmental Resources Information System (ERIS) was not intended to be an accounting system.

We disagree with the recommendation to hire an outside auditor who specializes in information systems for auditing of ERIS since we are replacing this system.

See pages 22-23

Finding 1 Scope Limitation over Fund 3347 – Voluntary Remediation Administrative Fund

- We were unable to audit cost recovery fees, voluntary remediation application fees, and licensed remediation specialist (LRS) application fees totaling \$886,016.70 for Fund 3347 during fiscal years 2007 and 2008 due to a lack of internal controls over the revenues including: lack of reconciliation, improper gap and uncollected reports, billing system discrepancies, and a lack of management review.

Auditor's Recommendation

We recommend DEP comply with W.Va. Code §5A-8-9(b), as amended, and maintain adequate revenue records. We further recommend DEP implement procedures to identify all unbilled costs, reconcile WVFIMS deposits to the ERIS accounting records on a regular basis, and regularly review and test the billing system to ensure it is functioning properly.

Spending Unit's Response

DEP agrees with this finding.

See pages 24-25

Finding 2 Scope Limitation over Fund 3217 – Leaking Underground Storage Tank Response Fund (LUSTR)

- We were unable to audit the \$25 portion of the \$90 Underground Storage Tank (UST) registration fees totaling \$246,625.86 for Fund 3217 during fiscal years 2007 and 2008 due to a lack of internal controls over the revenues including: DEP's inability to provide a listing of all active USTs for the audit period, lack of a consecutive or logical facility identification numbering system, billing discrepancies, a lack of reconciliation between billings and revenues received, and a lack of reconciliation of revenues received to monies deposited in WVFIMS. The remaining \$65 portion of the UST fees was deposited in a fund being audited during the post audit of the Division of Water & Waste Management.

Auditor's Recommendation

We recommend DEP comply with W.Va. Code §5A-8-9(b), as amended, and maintain adequate revenue records. We further recommend DEP implement effective procedures to overcome the internal control weaknesses listed above. Finally, we recommend DEP programmers find a way to make the ERIS database provide accurate reports of information pulled.

Spending Unit's Response

DEP agrees with this finding.

See pages 26-28

Finding 3 Unauthorized Collection of Garden Club Monies

- DEP receives checks made payable to the Garden Club, Inc. for the purchase of seeds for the Wildflower Program. However, DEP has no statutory authority to collect these monies. Based on the records provided, we were able to identify at least \$59,233.00 in checks that were sent to the Garden Club during fiscal years 2006 through 2010. However, due to discrepancies in the records, not maintaining a receipt log until December 2008, and monies not being deposited in WVFIMS, we were unable to determine the exact amount of monies that DEP received for the Garden Club; thus, the amount could be greater than listed above.

Auditor's Recommendation

We recommend DEP obtain statutory authority to collect funds for the Wildflower Program or find some other way to administer the program.

Spending Unit's Response

DEP agrees with this finding.

See page 29

Finding 4 No Daily Receipt Log Maintained & Not Deposited Within 24 Hours

- DEP did not date stamp or maintain a log of monies received totaling \$644,243.27 during fiscal years 2007 and 2008.

Auditor's Recommendation

We recommend that DEP comply with W.Va. Code §12-2-2, as amended, and maintain a log of daily receipts, deposit money within 24 hours, and reconcile the log to the actual cash deposited. Further, we recommend the deposit memo accompanying the checks to the Accounts Receivable Department include the following to enable a quick reference and an audit trail: (1) grantee/vendor name, (2) check number, and (3) check amount. Checks should be endorsed 'For Deposit Only' on the back of the check as soon as the check is received.

Spending Unit's Response

DEP agrees with this finding.

See pages 30-31

Finding 5 Monies Totaling \$137,200 Kept in an Unsecure Drawer

- During our preliminary planning & review of voluntary remediation application receipts for Fund 3347 - Voluntary Remediation Administrative Fund, we noted 37 checks totaling \$137,200 were held for up to two weeks throughout fiscal years 2007 and 2008 in an unlocked drawer before being deposited into the state account.

Auditor's Recommendation

We recommend DEP safeguard assets and keep all monies that cannot be deposited immediately in a secure location with limited access. Further, we recommend DEP comply with W.Va. Code §12-2-2, as amended.

Spending Unit's Response

DEP agrees with this finding.

See page 32

Finding 6 Fund 3484 - Highway Litter Control Program Fund and Fund 3485 – Litter Control Matching Fund Not Authorized by Statute

- DEP could not provide the statutory authority to create neither the Highway Litter Control Program Fund 3484 consisting of \$1,000,000 in transfers from the Division of Highways nor the Litter Control Matching Fund 3485 consisting of \$36,409.00 in fees and transfers. No code section in the West Virginia Code could be found that authorizes DEP to establish or use either the Highway Litter Control Program Fund or the Litter Control Matching Fund. There is a code section that allows the Division of Highways, not DEP, to create a Highway Litter Control Fund.

Auditor's Recommendation

We recommend DEP comply with W.Va. Code §5A-8-9(b), as amended and maintain adequate records by only using authorized special revenue funds.

Spending Unit's Response

DEP disagrees with this finding.

See pages 33-34

Finding 7 Internal Control Weakness in the DEP Vehicle Policy

- The DEP vehicle policy applicable to the entire DEP is too vague and subjective in regards to verifying driver licenses, reporting of violations/accidents, taking disciplinary action, and proper documenting.

Auditor's Recommendation

We recommend DEP modify the vehicle policy to overcome the weaknesses stated above.

Spending Unit's Response

DEP agrees with this finding.

See pages 35-36

Finding 8 Noncompliance with Vehicle Policy

- During our audit of DEP employee driving violations during fiscal years 2007-2009 for the entire DEP, we tested 42 of 72 violations and noted prior to 2008, DEP did not review Motor Vehicle Reports (MVRs) and did not take action accordingly against nine employees who had one major, one employee who had two major, and two employees who had two minor driving violations within one year in accordance with the DEP Vehicle Policy. Also, DEP did not determine whether a State or personal vehicle was involved for four major and one minor violation listed on the

MVRs that occurred on holidays or sick/annual leave. Thus we were unable to determine if disciplinary action should have been taken.

- During our audit of DEP vehicle accidents during fiscal years 2005-2009 for the entire DEP, we noted DEP did not take disciplinary action for two out of seven employees tested having two or more state vehicle accidents totaling \$4,137.00. Also, one of the two employees did not report a deer-related accident within two days in accordance with the DEP vehicle policy as well as Legislative Rule Title 148 Series 3. Further, we were unable to determine whether or not disciplinary action was taken against one employee who had three vehicle accidents with damages totaling \$16,438.00 because no disciplinary action documentation was available.
- During our audit of 36 DEP vehicle repair transactions for July 1, 2005 through March 3, 2010 for the entire DEP, we noted seven instances totaling \$9,478.13 where employees did not report accidents involving state vehicles within two days to their supervisor or Fleet Manager. One of these instances totaling \$972.65 included an employee who had an accident due to the use of a cell phone while driving a state vehicle. Also, DEP did not take disciplinary action against the above seven employees in accordance with the DEP Vehicle Policy.

Auditor's Recommendation

We recommend DEP update the vehicle policy to include appropriate procedures for taking disciplinary actions against employees' driving violations and better monitoring of state vehicle accidents/incidents. We further recommend DEP comply with the current policy and any revisions and report accidents timely and take appropriate disciplinary action when necessary.

Spending Unit's Response

DEP agrees with most of this finding.

See pages 37-41

Finding 9 Misclassified Expenditures

- During our various tests of expenditures during fiscal years 2007-2009, we noted 42 transactions totaling \$102,551.54 were misclassified.

Auditor's Recommendation

We recommend DEP strengthen internal controls over classification of expenditures to ensure transactions are made in accordance with the Expenditure Schedule Instructions. We also recommend DEP stays consistent when choosing Object Codes for similar items.

Spending Unit's Response

DEP agrees with most of this finding.

See pages 42-50

Finding 10 Misclassified Revenues

- During our audit of ten Miscellaneous Revenues & Administrative Settlements transactions, we noted seven instances totaling \$3,257.00 where transactions were misclassified during fiscal years 2007 and 2008.
- During our audit of reimbursements during fiscal years 2007-2009, we noted two reimbursements totaling \$3,089.60 were misclassified.

Auditor's Recommendation

We recommend DEP strengthen internal controls over classification of revenues to ensure transactions comply with the Expenditure Schedule Instructions as well as DEP's own Extended Revenue Codes and audit the coding. Further, we recommend DEP add descriptions to the current Extended Revenue Codes stating the purpose each extended code serves to ensure accurate coding. We also recommend DEP stays consistent when choosing Extended Revenue Codes and Object Codes for similar items.

Spending Unit's Response

DEP agrees with this finding.

See pages 51-53

Finding 11 No Reconciliation of Investments

- During our test of Investment Earnings during fiscal years 2007-2010, we noted a difference of \$7,564.00 on DEP's internal investment records for General Ledger Account (GLA) 1020-3217 and a difference of \$5,789.00 on DEP's internal investment records for GLA 1110-3217. This difference resulted from an investment and subsequent reversal on the same day of \$5,789.00 plus interest totaling \$1,775.00 that would have been earned according to DEP's investment records. DEP did not reconcile the ending cash balance in WVFIMS at fiscal year-end to the fiscal year-end totals on the DEP investment records or the discrepancy would have been found.

Auditor's Recommendation

We recommend DEP comply with W.Va. Code §5A-8-9(b), as amended, and maintain adequate documentation to support investments and reconcile balances on the internal records to the actual cash balance in WVFIMS.

Spending Unit's Response

DEP agrees with this finding.

See pages 54-55

Finding 12 Lack of Documentation over Vehicle Accidents

- During our audit of vehicle repair expenses for DEP as a whole during July 1, 2005 – March 3, 2010, we noted two instances totaling \$3,460.05 where one employee's vehicle accident file was incomplete and the other employee's file could not be located. We could not determine if the vehicle repair expenses were in compliance with the W.Va. Code, Purchasing Division's Policies and Procedures, and WVDEP Vehicle Policy.

Auditor's Recommendation

We recommend DEP maintain records of vehicle accidents/incidents in accordance with W.Va. Code §5A-8-9(b), as amended, the DEP Vehicle Policy, and the Purchasing Division's Policies and Procedures.

Spending Unit's Response

DEP agrees with this finding.

See page 56

Finding 13 Miscalculation of Payroll Expenditures

- During our test of payroll disbursements, we noted six employees of the nine DLR employees tested were incorrectly compensated for overtime. Between these six employees nine overtime transactions were incorrect by a total overpayment of \$20.96 and a total underpayment of \$338.57.
- During our test of retirement and resignation pay, we noted one employee of the six DLR employees tested was not properly compensated for pro-rated annual increment at separation from employment resulting in an underpayment of \$99.38.

Auditor's Recommendation

We recommend DEP comply with the FLSA, as amended, and Policy 3.5 of the DEP internal Attendance and Overtime Policy and pay all non-exempt employees overtime compensation at one and one-half the rate of regular pay for all hours worked over 40 hours. We further recommend DEP continue the new policy of comparing overtime forms to timesheets.

We also recommend DEP comply with W.Va. Code §5-5-2, as amended, and the WV DOP Annual Increment Policy and compensate employees for required annual increment payment.

Spending Unit's Response

DEP agrees with this finding.

See pages 57-59

Finding 14 Incorrect Ending Leave Balances

- During our audit of DLR sick and annual leave during fiscal years 2007-2009, we tested 15 of 115 employees and noted the ending balances as of June 30, 2009 was incorrect for two employees' annual leave balances, one employee's sick leave balance, one employee's compensatory time balance, and four employees' holiday time balances. The incorrect ending balances resulted from incorrect accrual rates, double balance deductions, and recording errors. We also noted DEP does not require employees to attest to their ending balances at least twice a year and thus, does not ensure the accuracy of all employees' ending leave balances.

Auditor's Recommendation

We recommend DEP comply with Legislative Rule, Title 143, Series 1, Section 14.3 and 14.15 and determine proper accrued annual leave and comp time/holiday time. In addition, we recommend the Payroll Department periodically audit time sheets against overtime/compensatory time forms. We further recommend DEP to make amends where possible, require employees to check their balances regularly, and require employees to sign off on the accuracy of their balances at least twice a year.

Spending Unit's Response

DEP agrees with this finding.

See pages 60-62

Finding 15 Improper Travel Reimbursements

- During our audit of 35 travel expenditures during fiscal years 2007-2009, we noted two instances totaling \$330.77 where DEP did not submit travel reimbursement requests within 15 days. We also noted two instances where DEP reimbursed employees for incorrect mileage totaling \$602.09 resulting in a total overpayment to the employees of \$70.18.

Auditor's Recommendation

We recommend DEP comply with sections 2.5 and 4.2.4.1 of the West Virginia State Travel Policy. All travel reimbursement requests must be submitted to the Auditor's Office within 15 days of the last day of travel and employees must travel the shortest practicable route. Further, we recommend the addresses of travel locations be recorded on the travel form to allow an independent person checking the form to ensure correct mileage is stated.

Spending Unit's Response

DEP agrees with part of this finding.

See pages 63-64

Finding 16 Lack of Documentation Pertaining to Payroll

- During our audit of payroll for fiscal years 2007-2009, we noted a lack of documentation to support payroll transactions in regards to timesheets for three employees, overtime slips for two employees, and White Collar Exemption forms for seven employees of the 14 employees tested. We also noted a lack of documentation to support payroll deductions for five of the 12 employees in regards to Life Insurance Forms, Flex Benefits Forms, Health Insurance Forms, State Employee Spouse Verification, and State and Federal Tax Withholding Forms. Further, DEP was unable to provide adequate documentation to support preapproval of 174 overtime transactions.

Auditor's Recommendation

We recommend DEP comply with W.Va. Code §5A-8-9(b), as amended, the Fair Labor Standards Act (FLSA), and DEP internal policies. DEP should maintain adequate documentation to support payroll transactions and deductions and require written pre-approval by Division Directors of overtime before the hours are actually worked.

Spending Unit's Response

DEP agrees with this finding.

See pages 65-68

Finding 17 Lack of Documentation Pertaining to Leave

- During the audit of 16 DLR employees' sick and annual leave for fiscal years 2007-2009, we noted DEP could not provide documentation for one employee's monthly Time and Activity Reports (time sheets) or leave requests, preapproval documentation, four Approval Forms for two employees' compensatory time earned, and five Approval Forms for five employees' holiday time earned.

Auditor's Recommendation

We recommend DEP comply with W.Va. Code 5A-8-9(b), as amended, and Legislative Rule, Title 143, Series 1, and Section 14 and maintain leave records and any documentation supporting the required preapproval process.

Spending Unit's Response

DEP agrees with this finding.

See pages 69-70

Finding 18 Lack of Segregation of Duties

- During our preliminary planning & review of Fund 3347 - Voluntary Remediation Administrative Fund and Fund 3487 – Recycling Assistance Fund during fiscal years 2007 and 2008 we noted a lack of segregation of duties. For Fund 3347, we noted the Administrative Secretary received monies and recorded the receipt in the accounting records. For Fund 3487, the Environmental Resources Specialist 2 reviewed and processed grant applications and forwarded them to the Environmental Resources Specialist 3, her husband, for approval.

Auditor's Recommendation

We recommend DEP comply with W.Va. Code §5A-8-9(b), as amended, and maintain adequate records by ensuring that duties are properly segregated.

Spending Unit's Response

DEP agrees with this finding.

See pages 71-72

Finding 19 Lack of Documentation over Travel

- During our audit of 35 travel expenditures during fiscal years 2007-2009, we noted the DEP submitted two Travel Expense Account Settlement forms totaling \$553.48 that did not include a Rental Vehicle vs. Privately-Owned Vehicle (POV) calculation form when a personal or rental vehicle was used.

Auditor's Recommendation

We recommend DEP comply with the DEP internal travel policy and attach a POV calculation form to all Travel Expense Account Settlement forms when a rental or privately-owned vehicle is used or revise the internal policy for clarity and change the wording from **all** Travel Expense Account Settlement forms to what the actual policy requires.

Spending Unit's Response

DEP agrees with this finding.

See page 73

Finding 20 Lack of Documentation over Advertising & Promotional Transaction

- During our audit of 35 advertising and promotional transactions during fiscal years 2007-2009, we noted one instance totaling \$100.00 where we were unable to determine if the transaction was made in accordance with WV Code or legislatively approved rules and regulations because DEP was unable to provide supporting documentation.

Auditor's Recommendation

We recommend DEP comply with W.Va. Code §5A-8-9(b), as amended, and maintain adequate documentation to support transactions.

Spending Unit's Response

DEP agrees with this finding.

See page 74

Finding 21 Weakness over Hospitality Forms

- During our audit of 18 hospitality expense transactions during fiscal years 2007-2009, we noted one instance totaling \$118.03 where DEP could not provide a hospitality form for cakes purchased for Adopt-A-Highway Volunteer Appreciation Day, and one instance totaling \$9,169.49 where DEP prepared a hospitality form almost ten months after the hospitality event.

Auditor's Recommendation

We recommend DEP comply with W.Va. Code §5A-8-9(b), as amended, and the Expenditure Schedule Instructions and prepare hospitality forms for hospitality expenses. Further, we recommend employees prepare and get management approval of hospitality forms prior to actual hospitality events.

Spending Unit's Response

DEP agrees with part of this finding.

See pages 75-76

Finding 22 Recycling Assessment Fee Not Allocated or Reconciled

- The Secretary of DEP did not allocate or deposit proceeds from the recycling assessment fee in accordance with statute during fiscal years 2007 and 2008. DEP has designated the State Tax Department to deposit and allocate the recycling assessment fee to the appropriate funds. In addition, DEP does not confirm the amounts and allocations of the recycling assessment fee by recalculating the allocation completed by the Tax Department.

Auditor's Recommendation

We recommend DEP comply with W.Va. Code §22-15A-19(h), as amended, and allocate monies collected from the recycling assessment fee as stated. If DEP wants the Tax Department to continue allocating the fee, we recommend DEP seek a change in statute and perform regular reconciliations of the recycling assessment fee to ensure proper allocations.

Spending Unit's Response

DEP disagrees with this finding.

See pages 77-78

Finding 23 Lack of Effective Monitoring over Billing and No Enforcement of Unpaid Fees and Late Fees

- During our review of the Leaking Underground Storage Tank Response Fund (Fund 3217 – LUSTR) during fiscal years 2007 and 2008, we noted the following internal control weaknesses over monitoring and late fees:
 1. Lack of Review of Tank Owners' Information for Billing System
 2. No Segregation of Duties over Monitoring of Unpaid Fees
 3. No Enforcement of Unpaid Fees & Late Fees for Active and Closed Tanks
 4. No Management Approval of Adjustments

Auditor's Recommendation

We recommend DEP comply with W.Va. Code §22-17-20(a) & 21(a), as amended, §22-17-6(b), as amended, and Legislative Rule, Title 33, Series 31, Section 4.4 and implement effective procedures to ensure UST information is entered into ERIS correctly for adequate billing of registration fees, properly segregate incompatible duties, collect unpaid fees timely, enforce late fees, and have management approval for all adjustments.

Spending Unit's Response

DEP agrees with most of this finding.

See pages 79-81

Finding 24 Noncompliance with Shiloh Trust Agreement

- During our audit of the Shiloh Environmental and Landfill Trust Fund (Fund 3488) during fiscal years 2007 and 2008, we noted the now retired Controller for DEP did not enforce duties to be performed by the Shiloh River Corporation in accordance with the trust agreement.

Auditor's Recommendation

We recommend DEP comply with the trust agreement and enforce any appropriate actions to ensure the Shiloh River Corporation comply with its part of the trust agreement.

Spending Unit's Response

DEP does not fully agree with this finding.

See pages 82-83

Finding 25 Inaccurate Listing of Vehicles and Mobile Equipment Units

- Upon comparison of the DEP list of all vehicles and mobile equipment units with the BRIM database for November 2009, we noted DEP did not maintain updated lists in neither the DEP list nor in the BRIM database. As a result of not maintaining an updated list of all vehicles and mobile equipment units, we noted DEP did not add, delete, or enter correctly V.I.N. numbers for 34 vehicles and mobile equipment units.

Auditor's Recommendation

We recommend DEP maintain adequate records in accordance with W.Va. Code §5A-8-9(b), as amended. We further recommend DEP reconcile the DEP list to the BRIM database annually and maintain a current updated list of all vehicles and mobile equipment units so BRIM will have accurate information to calculate premium amounts. Although BRIM only requires an updated agency list once a year, agencies are able to input updates/changes all year long. Therefore, we recommend DEP input any updates into the BRIM database as they occur.

Spending Unit's Response

DEP does not fully agree with this finding.

See pages 84-85

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF LAND RESTORATION
JULY 1, 2006 – JUNE 30, 2008**

INTRODUCTION

POST AUDIT AUTHORITY

This is the report on the post audit of the West Virginia Department of Environmental Protection (DEP), Division of Land Restoration (DLR) for the audit period July 1, 2006 – June 30, 2008. Any deviations from the audit period can be found in the Audit Scope section. The audit was conducted pursuant to Chapter 4, Article 2 of the West Virginia Code, which requires the Legislative Auditor to “make post audits of the revenues and funds of the spending units of the state government, at least once every two years, if practicable, to report any misapplication of state funds or erroneous, extravagant or unlawful expenditures by any spending unit, to ascertain facts and to make recommendations to the Legislature concerning post audit findings, the revenues and expenditures of the state and of the organization and functions of the state and its spending units.”

BACKGROUND

The Division of Land Restoration is made up of the Office of Abandoned Mine Lands & Reclamation, the Office of Environmental Remediation, the Office of Special Reclamation, and REAP-The Next Generation. The Office of Abandoned Mine Lands & Reclamation was established to restore and reclaim West Virginia’s land and water resources disturbed by surface mining operations prior to the passage of the federal Surface Mine Control and Reclamation Act of 1977. The Office of Environmental Remediation facilitates the cleanup and reuse of lands with contaminants in the soil or groundwater that likely pose a risk to human health and the environment. It promotes consistency among the agency’s cleanup programs while focusing energy and technical talent on the remediation sciences and procedures used to restore contaminated sites. The Office of Special Reclamation reclaims and rehabilitates lands that were mined and abandoned after August 3, 1977. Rehabilitation Environmental Action Plan (REAP)-The Next Generation coordinates cleanup efforts of the following beautification programs: Pollution Prevention and Open Dump, West Virginia Make-It-Shine, Adopt-A-Highway, Clean Streams Initiative, Statewide Recycling, and Operation Wildflower.

The West Virginia Department of Environmental Protection - Division of Land Restoration is currently located in Charleston, West Virginia, in Kanawha County. A listing of key DEP personnel is on the following page.

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF LAND RESTORATION
JULY 1, 2006 – JUNE 30, 2008**

SPENDING UNIT CONTACTS

West Virginia Department of Environmental Protection – Division of Land Restoration

Randy C. Huffman Cabinet Secretary (May 2008 – Present)
Deputy Cabinet Secretary and Director, Division of Mining & Reclamation (April 2005 – April 2008)

Stephanie R. Timmermeyer Cabinet Secretary (March 2003 – April 2008)

Lisa A. McClung Deputy Cabinet Secretary (May 2008 – Present)
Director, Division of Water and Waste Management (March 2005 – May 2008)

June Casto Chief, Office of Administration (April 2008 – Present)

B. F. Smith Chief, Office of Administration (December 2003 – April 2008)

Jean J. Sheppard..... Controller (January 2010 – Present)

Ramona Dickson..... Controller (May 1998 - July 2009)

Ken Ellison..... Director, Division of Land
Restoration (March 2003 - Present)

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION DIVISION OF
LAND RESTORATION
JULY 1, 2006 – JUNE 30, 2008**

AUDIT SCOPE

We have audited the West Virginia Department of Environmental Protection - Division of Land Restoration for the period July 1, 2006 through June 30, 2008. Our audit scope included a review of internal control and compliance with laws, regulations, and provisions of contract agreements applicable to (a) revenues in DLR Funds 3217, 3255, 3347, 3484, 3485, 3486 (internal control only – the post audit of DWWM is testing Revenue Code 689 during the audit of the solid waste assessment fee), 3487, & 3488 during fiscal years 2007 & 2008, (b) investment earnings for DLR Funds 3217, 3255, 3347, 3484, 3485, 3486, 3487, & 3488 during fiscal years 2007-2010, (c) expenditures for general purchases, travel, reclamation of non-State property, hospitality, advertising & promotional, grants, maintenance contracts, miscellaneous, and rentals/leases for all DLR funds except Funds 3312, 3317, 3321, 3345, & 8796 during fiscal years 2007-2009, (d) personal services expenditures (payroll, payroll transfers, leave, increment, & separation pay) for all DLR Funds including 3312, 3317, 3321, 3345, & 8796 during fiscal years 2007-2009. With the exception of personal services, revenues and expenditures for DLR Funds 3312, 3317, 3321, 3345, & 8796 will be reported on separately at a later date. Our audit of vehicles for the agency as a whole was as follows: (a) vehicle premiums, violations, & accidents for fiscal years 2005-2009, (b) vehicle rentals and DEP-owned vehicles as of November 2009, and (c) vehicle repairs for July 1, 2006 – March 3, 2010. The audit was conducted in accordance with auditing standards generally accepted in the United States, except for the organizational independence impairment previously described in the Opinion section.

OBJECTIVES AND METHODOLOGIES

The objectives of our post audit were to audit the revenues and expenditures of the spending unit, to report any misapplication of state funds or erroneous, extravagant or unlawful expenditures by any spending unit that we find, to ascertain facts, and to make recommendations to the Legislature concerning post audit findings, the revenues and expenditures of the state and of the organization, and functions of the state and its spending units. We were to determine whether expenditure and revenue transactions were related to the spending unit's programs, were reasonable, and were recorded properly in the accounting systems. Additionally, we were to examine the spending unit's records and internal control over transactions and to evaluate its compliance with applicable State laws, rules and regulations.

In preparation for our testing, we studied legislation, applicable WV Code sections, applicable rules and regulations, and policies of the spending unit. Provisions that we considered significant were documented and compliance with those requirements was verified by interview, observations of the

spending unit's operations, and through inspections of documents and records. We also tested transactions and performed other auditing procedures that we considered necessary to achieve our objectives. Additionally, we reviewed the budget, studied financial trends, and interviewed spending unit personnel to obtain an understanding of the programs and the internal controls. In planning and conducting our post audit, we focused on the major financial-related areas of operations based on assessments of materiality and risk.

A variation of non-statistical and statistical sampling was used. Our samples of transactions were designed to provide conclusions about the validity of transactions, as well as internal control and compliance attributes. Some transactions for testing were selected using RAT-STAT statistical software and other transactions were selected for testing using professional judgment.

DEP's written response to the reportable compliance and other matters identified in our audit has not been subjected to the auditing procedures applied in the audit and, accordingly, we express no opinion on it.

DEP's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved. Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Post Audit Subcommittee in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

CONCLUSIONS

This report includes material findings regarding instances of noncompliance with applicable laws, rules or regulations. Other less significant findings that did not warrant inclusion in this report were communicated to DEP.

EXIT CONFERENCE

We discussed this report with management of the spending unit on December 28, 2010. All findings and recommendations were reviewed and discussed. Management's response has been included at the end of each finding.

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF LAND RESTORATION
JULY 1, 2006 – JUNE 30, 2008**

**MATERIAL WEAKNESSES, SIGNIFICANT DEFICIENCIES, REPORTABLE COMPLIANCE
AND OTHER MATTERS**

Informational Item 1 No Audit of the Environmental Resources Information System (ERIS) Database

Condition: During our Post Audit of the DEP-DLR, we noted DEP relied heavily on the Environmental Resources Information System (ERIS) to track incoming revenues, billings, permitting, reclamation, and employee timekeeping & leave. ERIS was created as an information system only and was never meant to be an accounting system. However, DEP has adopted ERIS as the official accounting record. Throughout the audit we noted major problem areas within ERIS including, but not limited to:

1. The inability to generate accurate reports of information within the ERIS database,
2. The inability to reconcile the ERIS database to WVFIMS,
3. The inability to generate proper year end uncollectible reports,
4. Limitations to the type of information that can be entered,
5. Limitations over pulling historical data from the ERIS database,
6. Controls that are in place, but do not work as described,
7. Inaccuracies found in the ERIS billings and fee calculations,
8. Double entries by ERIS, and
9. Additional deductions from employee leave balances for untaken leave.

Cause: The ERIS database was created in-house as an informational database and DEP did not consult with specialists, auditors, or accountants to determine the necessary type of information and controls that needed to be created for the ERIS database to be used as an accounting system. Additionally, the ERIS database has never been audited by an information technology auditor.

Effect: As a result of the weaknesses in the ERIS database, we were unable to audit two DLR funds totaling \$1,132,642.56.

Recommendation: We recommend DEP hire an outside auditor who specializes in information technology auditing and provide a copy of the final audit report and DEP's plan of corrective action to the Legislative Post Audit Division.

Spending Unit's
Response: *The agency agrees that the Environmental Resources Information System (ERIS) was not intended to be an accounting system. This system is used as a database for our environmental programs to provide information on permits and*

regulated facilities. We realize the need for an accounts receivable and timekeeping system and are in the process of finding a replacement for the ERIS database system. This system will include both accounts receivable and timekeeping functionality and will also be compatible with the new Enterprise Resource Planning (ERP) system being implemented by the State.

We disagree with the recommendation to hire an outside auditor who specializes in information systems for auditing of ERIS since we are replacing this system. The limitations of the database and the reporting issues will be resolved with the new system and we believe hiring a technology auditor at this time would only be an additional expense for a system that would be replaced in a few months.

Finding 1 **Scope Limitation over Fund 3347 – Voluntary Remediation Administrative Fund**

Condition: We were unable to audit cost recovery fees, voluntary remediation application fees, and licensed remediation specialist (LRS) application fees totaling \$886,016.70 for Fund 3347 during fiscal years 2007 and 2008 because the process to account for the fees had the following internal control weaknesses:

1. The ERIS revenue records could not be reconciled to WVFIMS deposits because DEP did not maintain proper year end gap reports and proper uncollected reports.
2. DEP did not have procedures in place to ensure the billing system was functioning as designed, all calculations were correct, and everyone that was supposed to be billed actually got billed.
3. DEP did not have procedures in place to ensure amounts recorded were reconciled to the control accounts in the DEP general ledger.
4. DEP did not regularly review the accounts receivable.

Without effective reconciliation procedures, DEP cannot adequately track monies due the State.

Criteria: W.Va. Code § 5A-8-9(b), as amended, states in part:

“The head of each agency shall:

... (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities...”

Cause: DEP does not have a system of internal controls to ensure all application fees and cost recovery fees have been billed and are properly accounted for in the accounting records. The previous Voluntary Remediation Program Manager concurred that DEP did not have a formal reconciliation process to reconcile WVFIMS deposits to the ERIS accounting records, and stated DEP would develop and implement reconciliation.

Effect: As a result of the internal control weaknesses listed above, we were unable to audit Fund 3347 totaling \$886,016.70. Further, without effective reconciliation procedures errors in recording transactions can occur and go undetected by DEP personnel in the normal course of performing their assigned functions.

Recommendation: We recommend DEP comply with W.Va. Code §5A-8-9(b), as amended, and maintain adequate revenue records. We further recommend DEP implement procedures to identify all unbilled costs, reconcile WVFIMS deposits to the ERIS accounting records on a regular basis, and regularly review and test the billing system to ensure it is functioning properly.

Spending Unit's
Response:

DEP agrees with this finding. Until the replacement for ERIS has been purchased, the accounts receivable manager has been working closely with the IT staff to improve the information and the reports that can be generated from the system. DEP believes we have corrected the GAAP and uncollected reports. The agency is drafting procedures for the reconciling of the ERIS accounting records with the FIMS deposits to ensure accuracy.

Finding 2

Scope Limitation over Fund 3217 – Leaking Underground Storage Tank Response Fund (LUSTR)

Condition:

We were unable to audit the \$25 portion** of the \$90 Underground Storage Tank (UST) registration fees totaling \$246,625.86 for Fund 3217 – Leaking Underground Storage Tank Response Fund (LUSTR) during fiscal years 2007 and 2008 because the process to account for the fees had the following internal control weaknesses:

1. DEP was unable to provide a listing of all active USTs for the audit period.

All UST information was kept in ERIS; however, the system could not pull the historical information needed to audit the registration fees.

2. The Facility Identification numbering system used to account for each UST owner is not consecutive or logical.

Upon review of the ERIS database, we noted 926 instances of gaps totaling 18,641 missing or skipped facility ID numbers. The largest gap had 9,800 numbers missing or skipped. Inspectors are given individual blocks of numbers to assign, but when an inspector leaves employment with DEP, the new inspector receives a new block of numbers rather than starting where the previous inspector left off.

3. DEP did not ensure that all active tank owners were in the billing system. Thus, we were unable to determine if all active tank owners were billed the UST registration fee.

We noted DEP entered the status/information of tank owners into ERIS only when DEP received a notification form from the tank owners or the facilities. Prior to the billing of the annual registration fees, DEP did not ensure the ERIS database included all active tanks in the entire state.

4. DEP did not reconcile the UST registration fees billed in ERIS to the UST registration fee revenues received. Also, DEP did not reconcile the revenues received to the actual monies deposited in WVFIMS.

Based on the documentation provided, we noted DEP billed registration fees to two tank owners for four USTs which were not listed in the ERIS UST database provided to us. Discrepancies in the data in ERIS and the data that could be pulled made it apparent that there were limitations to the system.

**The remaining \$65 portion of the UST fee is deposited into a DWWM fund, which is currently being audited in a separate post audit and any noncompliance will be included in the DWWM audit report.

Criteria: W.Va. Code § 5A-8-9(b), as amended, states in part:

“The head of each agency shall:

... (b) **Make and maintain records containing adequate and proper documentation** of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities...”

W.Va. Code § 22-17-6, as amended, states in part:

“(b) The director shall promulgate rules applicable to owners or operators of underground storage tanks or other affected persons, as appropriate, as follows:

(1) A requirement for a yearly registration fee for underground storage tanks”

Cause: ERIS was created as an information system and does not have the capabilities to generate a list of all active tanks for a particular historical period.

According to the former Environmental Resources Program Manager, the facility identification numbers are sequential, but the reason for the gaps in facility ID numbers is unknown. Further, the Environmental Resources Program Manager stated, “Currently, DEP provides a two-digit county code based on the county the site is located in, and then uses the facility ID book and assigns the site the next five digit number in the sequence.”

Effect: As a result of 18,641 missing/skipped facility identification numbers, the inability of DEP to provide a list of all active tanks, DEP not ensuring all active tanks were billed UST registration fees, and discrepancies in the records provided, we were unable to audit Fund 3217 totaling \$246,625.86 during fiscal years 2007 and 2008.

Recommendation: We recommend DEP comply with W.Va. Code §5A-8-9(b), as amended, and maintain adequate revenue records. We further recommend DEP implement effective procedures to overcome the internal control weaknesses listed above. Finally, we recommend DEP programmers find a way to make the ERIS database provide accurate reports of information pulled.

Spending Unit’s Response: *DEP agrees with this finding.*

1. Listing of active USTs. *A list of active USTs can be pulled from the database for current information. At the present time, IT cannot pull historical information at the time of each billing for the purpose of auditing past years.*

This deficiency will need to be addressed in the planned updates to the UST database.

2. Sequential ID numbers. *We have addressed this problem currently by issuing ID numbers only from the Charleston office, issuing them sequentially. When the UST database upgrade is complete, the ID number will be automatically assigned in ERIS.*

3. Ensure all active tank owners are in the billing system. *Owners are required to use the notification form to register all active USTs in the state and this form is used to enter the information into the ERIS billing system. Additionally, inspection staff will have owners complete a notification form if they find a previously undocumented tank. The administrative enforcement process has been used historically to ensure owners complied with registration requirements. The carrier rule requiring petroleum carriers to verify compliance with registration and fee payments before they can deliver any product is also an enforcement tool.*

4. Did not reconcile registration fees billed to revenues received. *If fees billed do not match fee revenues received, both UST staff and Fiscal Services staff discuss any discrepancies and reconcile them. The process of reconciling revenues received and revenues deposited is being implemented in accounts receivable.*

Finding 3**Unauthorized Collection of Garden Club Monies**

Condition: DEP receives checks made payable to the Garden Club, Inc. for the purchase of seeds for the Wildflower Program. However, DEP has no statutory authority to collect these monies. Based on the records provided, we were able to identify at least \$59,233.00 in checks that were sent to the Garden Club during fiscal years 2006 through 2010. However, due to discrepancies in the records, not maintaining a receipt log until December 2008, and monies not being deposited in WVFIMS, we were unable to determine the exact amount of monies that DEP received for the Garden Club; thus, the amount could be greater than listed above.

Criteria: There is no criteria that authorizes the collection of funds for the wildflower fund.

Cause: According to DEP, the Wildflower Program was transferred to DEP from the Division of Natural Resources (DNR). DEP continued the program the same way it was being done at DNR.

Effect: Collecting unauthorized funds creates a state liability that is not authorized by code. There is an increased risk that funds maybe misappropriated or stolen.

Recommendation: We recommend DEP obtain statutory authority to collect funds for the Wildflower Program or find some other way to administer the program.

Spending Unit's
Response:

DEP agrees with this finding.

DEP is in the process of scheduling a meeting with the Department of Highways and the Garden Club in January to explore how the Wildflower Program can be reorganized. Currently DEP is implementing a safekeeping policy that requires that one check log be maintained of all checks received by this program.

Finding 4

No Daily Receipt Log Maintained & Not Deposited Within 24 Hours

Condition: DEP did not date stamp or maintain a log of monies received totaling \$644,243.27 during fiscal years 2007 and 2008 related to:

• Grant Reimbursements – 40 checks	\$477,444.99
• Voluntary Remediation Admin. Fund	\$137,200.00
• Leaking Underground Storage Tank Response Fund **	\$24,662.59
• Cash Disbursements Reimbursement – 1 check	\$2,400.00
• Advertising & Promotional Reimbursements – 2 checks	\$1,411.20
• Miscellaneous Revenues & Administrative Settlements - 7 checks	\$920.75
• Miscellaneous Expenses Reimbursements	\$114.14
• Travel, Training & Development Reimbursement – 1 check	\$89.60

*** Based on the assertion by DEP that DEP receives only 10% of UST Registration Fees.*

Criteria: W.Va. Code §12-2-2, as amended, states in part:

“a) All officials and employees of the state authorized by statute to accept moneys due the State of West Virginia **shall keep a daily itemized record of moneys received** for deposit in the State Treasury and shall **deposit within twenty-four hours** with the State Treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever.”

Cause: According to the Administrative Services Manager over Accounts Receivable, he concurs that the checks received were not date stamped or maintained in a daily receipt log. In regards to grants, the REAP Program Office did not start keeping a check log for grant monies reimbursed until December 2008.

Effect: By not date stamping the check when received, we cannot determine if the check was deposited within 24 hours of being received in compliance with statute. If a check is not deposited within 24 hours it could be lost or misplaced, and the State will not have access to money it may need. In addition, the State cannot earn interest on monies that have not been deposited.

Recommendation: We recommend DEP comply with W.Va. §12-2-2, as amended, and maintain a log of daily receipts, deposit money within 24 hours, and reconcile the log to the actual cash deposited. Further, we recommend the deposit memo accompanying the checks to the Accounts Receivable Department include the following to enable a quick reference and an audit trail: (1) grantee/vendor name, (2) check number, and (3) check amount. Checks should be endorsed ‘For Deposit Only’ on the back of the check as soon as the check is received.

Spending Unit's
Response:

DEP agrees with this finding.

DEP has drafted a safekeeping policy that requires that a check log be maintained of all checks received by each program. It also requires that all checks be deposited within 24 hours.

Finding 6 Fund 3484 - Highway Litter Control Program Fund and Fund 3485 – Litter Control Matching Fund Not Authorized by Statute

Condition: DEP could not provide the statutory authority to create neither the Highway Litter Control Program Fund 3484 consisting of \$1,000,000 in transfers from the Division of Highways nor the Litter Control Matching Fund 3485 consisting of \$36,409.00 in fees and transfers. No code section in the West Virginia Code could be found that authorizes DEP to establish or use either the Highway Litter Control Program Fund or the Litter Control Matching Fund. There is a code section that allows the Division of Highways, not DEP, to create a Highway Litter Control Fund.

Criteria: W.Va. Code § 5A-8-9(b), as amended, states in part:

“The head of each agency shall:

... (b) **Make and maintain records containing adequate and proper documentation** of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities...”

A legal opinion issued by Legislative Services, states in part:

“Upon researching the W.Va. Code back to 1991, there was found no article or section which created a special revenue account for Highway Litter Control Program Fund or Litter Control Matching Fund.

There is no mention of ‘Highway Litter Control Fund’ in W.Va. Code §22-15A, so one can assume that W.Va. Code §17-2A-21 is referring to the litter Control Fund that is continued by W.Va. Code §22-15A-4(c). There is one other mention of a ‘Highway Litter Control Fund’ in the code, found in W.Va. Code §17A-10-15, however, this section states:

All moneys collected under this section shall be deposited in the state treasury and credited to **a fund established within the department of highways, named the “Highway Litter Control Fund”** for litter control maintenance of the highways.

This section establishes a “Highway Litter Control Fund”, however, this fund is established for and maintained by the Department of Highways.”

Cause: DEP cited W.Va. Code §22-15A-4, which creates Fund 3486 - Litter Control Fund and W.Va. Code §17A-10-15, which authorizes the Division of Highways to create a Highway Litter Control Fund as the statutory authority to create these funds.

Effect: Establishing unauthorized funds may lead to an increased risk that funds may be

misappropriated or stolen. The \$36,409.00 in Fund 3485 should have been recorded in Fund 3486 – Litter Control Fund. The \$1,000,000 in Fund 3484 should have been recorded in a fund that was authorized by statute.

Recommendation: We recommend DEP comply with W.Va. Code §5A-8-9(b), as amended and maintain adequate records by only using authorized special revenue funds.

Spending Unit's
Response:

DEP disagrees with this finding.

Although there is no legislative language that expressly allows the DEP to have created a fund titled "Highway Litter Control Program Fund", the ability to have and utilize Fund 3484 (Highway Litter Control Program Fund) allows this agency to comply with WV Code 5A-8-9(b). The head of the agency shall (b) make and maintain records containing adequate and proper documentation.

In addition, we will seek interpretation from our legal counsel on DEP's use of this fund.

Fund 3485, Litter Control Matching Fund, along with three other special revenue funds were created in Fiscal Year 2006 to mirror four special revenue funds that were being transferred to this department from the Division of Natural Resources per Senate Bill 428.

Beginning in Fiscal Year 2011 fund 3485 has ceased being used. The Litter Control Fund (3486) was established per WV Code 22-15A-4 and all of the revenue received by this department in the form of littering fines is given back to the county and local governments for its litter control programs through litter control grants.

Finding 7

Internal Control Weakness in the DEP Vehicle Policy

Condition:

The DEP vehicle policy applicable to the entire DEP is too vague and subjective in regards to verifying driving licenses, reporting of violations/accidents, taking disciplinary action, and proper documenting. The following details these items:

1. DEP only verifies new employee's driving licenses, not employees who are promoted within DEP.
2. The reporting of violations/accidents is left up to the employee to report a violation/accident in a State vehicle to DEP. DEP does not frequently inspect state cars for unreported damages.
3. The policy only states disciplinary action may be taken. It leaves the decision to make recommendations up to individual supervisors, who may or may not recommend Human Resources (HR) to take disciplinary action. Further, one supervisor's assessment and recommendation may not be consistent with a different supervisor's assessment and recommendation over the same type of offense.
4. The policy does not mention what types of documents will be maintained for verbal, written, or some other disciplinary action.

Criteria:

The DEP vehicle policy states in part:

"3.8 - Vehicles may be recalled or reassigned within the Department if any of the following occur:

(e) An employee is cited twice in one (1) year for minor violations of the law ... A single major violation of the law ... **may** be grounds for vehicle recall and reassignment. An employee's failure to report major or minor violations to the employee's immediate supervisor is also **grounds for termination** of a vehicle assignment. Offenses ... **will** also subject the employee to disciplinary action that **may** include dismissal ...

4.1 - Each **prospective** employee must sign a Motor Vehicle Record (MVR) release form ... A **prospective** employee will not receive an offer of employment if his or her MVR indicates violations in accordance with Section 3.8 (h).

4.2 - ... **Any** major or minor violations will be handled in accordance with Section 3.8 (e) above.

5.5 - The **immediate supervisor** of the involved driver **will provide recommendations** to the appropriate Office Chief or Division Director and to the HR section **for any necessary disciplinary measures needed** or decisions as to whether the employee's vehicle should be recalled or reassigned.

5.6(b) - The employee's supervisor will discuss **each occurrence** with the driver and provide verbal instructions, order remedial action, or **take any appropriate disciplinary action.**"

Cause: The current vehicle policy is too vague & subjective.

Effect: As a result of a vague, subjective vehicle policy, DEP did not verify the driving license validity of one employee who was promoted to an inspector position, didn't have a valid driving license, and had an accident in a State vehicle. The State incurred expenses totaling \$307,595.94 as a result of the employee being found at fault. Disciplinary action does not appear equal across DEP and adequate documentation is not maintained to determine if action was actually taken. Further, if employees are not aware of what is expected and what the consequences will be for noncompliance, there is no incentive to follow the policy.

Recommendation: We recommend DEP modify the vehicle policy to overcome the weaknesses stated above.

Spending Unit's
Response:

DEP agrees with this finding.

While DEP's policy may seem vague and subjective, it is written to provide guidance and is intended to allow the supervisor to determine the appropriate disciplinary action to be taken based on the specific circumstances and the employee's performance.

*1. **Licenses.** Anytime a DEP employee is assigned a state vehicle, they are required to send a copy of their current license to DEP's Fleet Manager to be kept in that employee's driver file. This would also be true if an employee was promoted into a position that provided a vehicle and the employee did not have one previously. In addition, driving records are checked annually to identify any potential problems.*

*2. **Reporting violations/accidents.** DEP will advise supervisors to inspect employee vehicles frequently and report any damage to the Fleet Manager.*

*3. **Disciplinary Actions.** Since supervisors are most familiar with their employees' situations and work history, appropriate disciplinary decisions are left up to them.*

*4. **Documentation of Discipline.** DEP will remind supervisors of the proper documentation for disciplinary actions based upon Division of Personnel's Supervisor's Guide to Discipline.*

Finding 8

Noncompliance with Vehicle Policy

Condition:

1. *Test of Driving Violations*

During our audit of DEP employee driving violations during fiscal years 2007-2009 for the entire DEP, we tested 42 of 72 violations and noted the following issues:

- Prior to 2008, DEP did not review Motor Vehicle Reports (MVRs) and did not take action accordingly against nine employees who had one major, one employee who had two major, and two employees who had two minor driving violations within one year in accordance with the DEP Vehicle Policy. The Vehicle Policy did not specify whether 'within one year' meant one calendar year, one fiscal year, or one year from the incident date, and
- DEP did not determine whether a State or personal vehicle was involved for four major and one minor violation listed on the MVRs that occurred on holidays or sick/annual leave. Thus we were unable to determine if disciplinary action should have been taken.

2. *Test of Vehicle Accidents*

During our audit of DEP vehicle accidents during fiscal years 2005-2009 for the entire DEP, we noted the following issues:

- DEP did not take disciplinary action for two out of seven employees tested having two or more state vehicle accidents totaling \$4,137.00. Also, one of the two employees did not report a deer-related accident to the corresponding supervisor or Fleet Manager within two days in accordance with the DEP vehicle policy as well as Legislative Rule Title 148 Series 3.
- We were unable to determine whether or not disciplinary action was taken against one employee who had three vehicle accidents with damages totaling \$16,438.00 because no disciplinary action documentation was available.

3. *Test of Vehicle Repairs*

During our audit of 31 DEP vehicle repairs for July 1, 2005 through March 3, 2010 for the entire DEP, we noted the following issues:

- Seven instances totaling \$9,478.13 where employees did not report accidents involving state vehicles within two days to their supervisor or Fleet Manager.
- One of the instances above totaling \$972.65 included an employee who had an accident due to the use of a cell phone while driving a state vehicle.

- DEP did not take disciplinary action against the above seven employees in accordance with the DEP Vehicle Policy.

Criteria:

The DEP Vehicle Policy states in part:

“3.4

DEP drivers are prohibited from talking on a cellular phone while driving... If an employee is involved in an accident and is determined to be at fault, and if that employee was distracted due to the prohibited use of communications equipment, that **employee will be subject to disciplinary action.**”

“3.8

Vehicles may be recalled or reassigned within the Department if any of the following occur:

...e) an employee is cited twice in one year for minor violations of the law such as, but not limited to, speeding violations, illegal parking, expired state inspection sticker, or seatbelt violations. A single major violation of the law such as, but not limited to, a Driving Under the Influence (DUI) violation, may be grounds for vehicle recall assignment... Offenses like those described above will also **subject the employee to disciplinary action** that may include dismissal from employment with DEP...”

“5.1

... b) if no injury has occurred, the driver must complete an RMI-1 form and obtain two written estimates to repair the damaged state vehicle. This information must be sent to the DEP Fleet Manager **within 48 hours of the accident...**”

“5.6

... a) all vehicles accidents will be reviewed by the DEP Fleet Manager to determine if driver was at fault according to the police report.

b) The employee’s supervisor will discuss each occurrence with the driver and provide verbal instructions, order remedial action, or take any appropriate disciplinary action.

c) After a second major or minor accident within a three-year period, determined by the police report to involve driver fault, the supervisor may require additional or remedial training or recall or reassign the employee’s vehicle.”

Title 148, Series 3 of the W.Va. Code of State Rules states in part:

“8.5

...The use of a wireless electronic communication device by the operator of a moving vehicle on a public road or highway is prohibited except when the wireless communication device is a hands-free wireless electronic communication device being used hands-free.”

“10.9

...Accidents must be investigated by the spending unit **within two calendar days of the accident**. The spending officer must provide to the Travel Management Office and BRIM an accident report with sufficient detail to determine the circumstances of the accident. In the event of an accident, violation, or when it is deemed necessary by the spending unit, the driving records of the operator will be reviewed and appropriate action shall be taken by the spending unit.”

W.Va. Code §5A-8-9(b), as amended, states in part:

“The head of each agency shall:

... (b) **Make and maintain records containing adequate and proper documentation** of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities...”

Cause:

According to the Chief of the Office of Administration, all of the accidents/incidents were reported to the employees’ corresponding supervisors, but DEP could not provide documentation of the two day requirement. DEP did not take any disciplinary action against some employees’ violations and DEP was unable to determine whether any disciplinary action was taken against the remaining employees who had violations because the employees’ supervisors were retired and could not be contacted.

We believe DEP did not implement a vehicle policy to provide a proper guideline to notify employees’ driving violations to the corresponding supervisor and to take any disciplinary action against an employee who had driving violations in accordance with Legislative Rule, Title 148, Series 3. Also, the DEP Vehicle Policy is too vague and subjective in regards to disciplinary action that should be taken.

Effect:

As a result of not following the DEP Vehicle Policy and not taking disciplinary action or properly monitoring vehicle accidents/incidents, the risk of liability associated with the operation of state vehicles is greatly increased for DEP. Since insurance premiums factor in the riskiness of drivers operating state vehicles, it is likely DEP will incur greater expenses. Also, if DEP does not take proper disciplinary action against violators in accordance with the DEP Vehicle Policy, employees are not being held accountable for their actions and will have no reason to comply with the DEP Vehicle Policy and repeat violations/offenses will likely occur. As a result of DEP not identifying whether or not a violation

occurred in a state vehicle or a personal vehicle on holidays or sick/annual leave, employees may be using their state cars on holidays and sick/annual leave days for personal purposes.

Recommendation: We recommend DEP update the vehicle policy to include appropriate procedures for taking disciplinary actions against employees' driving violations and better monitoring of state vehicle accidents/incidents. We further recommend DEP comply with the current policy and any revisions and report accidents timely and take appropriate disciplinary action when necessary.

Spending Unit's
Response:

DEP agrees with most of this finding. Exceptions are noted below.

1. Test of Driving Violations

- *The DEP annually reviews motor vehicle records (MVR). These records do not identify whether a personal or state vehicle was involved. In order to determine this, staff would spend a tremendous amount of time performing research at courthouses to obtain license numbers of the vehicle.*
- *DEP will amend the Vehicle Policy to define the term "year" to mean one calendar year.*
- *MVRs do not identify the specific vehicle. The DEP conducts quarterly internal audits of state vehicle mileage and fuel audits to monitor and reduce personal use of state vehicles. This procedure helps ensure that employees are not using state vehicles for personal use.*

2. Test of Vehicle Accidents

- *Based on the information provided, it is possible that the accidents listed may be what the vehicle policy defines as "Incidental", which is: "A single vehicle incident that is less than \$1,000." Although it is a requirement for employees to submit their accident reports in 48 hours, there is no requirement for disciplinary action. Due to the nature of their jobs, there are instances where the employee may have to verbally notify the DEP Fleet Manager or their supervisor and complete the paperwork when they return to their respective office. DEP will remind supervisors and employees of the requirement to report any vehicle damage to the Fleet Manager within the 48 hour time frame.*
- *The employee in question who had three accidents in less than two years may have received some type of disciplinary action or required training. The employee's supervisor has since retired and the records were no longer available. Again, this will be addressed with supervisors.*

3. Test of Vehicle Repairs

- *Due to the nature of their jobs, there are instances where the employee may have to verbally notify the DEP Fleet Manager or their supervisor and*

complete the paperwork at their first opportunity. DEP will remind supervisors and employees of the requirement to report any vehicle damage to the Fleet Manager within the 48 hour time frame.

- *DEP disagrees with this statement:*

The description of the occurrence on the accident form, written by the employee, can be interpreted that a branch struck her vehicle as she was pulling off to the side of the road so she could use her cellular phone, as required by DEP Vehicle Policy.

- *DEP policy does not require disciplinary action when the 48-hour standard is not met. DEP will remind supervisors and employees of the requirement to report any vehicle damage to the Fleet Manager within the 48 hour time frame.*

Finding 9

Misclassified Expenditures

Condition:

During our various tests of expenditures during fiscal years 2007-2009, we noted 42 transactions totaling \$102,551.54 were misclassified. The tests and transactions are listed below.

1. Test of Cash Disbursements – Object Code Misclassification

We noted seven transactions totaling \$33,881.77 (12%) of the 40 transactions totaling \$279,444.95 tested were misclassified. The schedule below details the misclassification by object code noted during our test of expenditures:

#	Agency Code	Audited Code	FIMS ID #	Misclassified Transaction Amount	Invoice Amount	Description of Purchase
1	034	035	I007989068	\$11,755.10	\$11,755.10	Recycling Containers for Marshall
2	034	035	I007976545	10,985.00	10,985.00	Recycling Containers for Appalachian Power Park
3	034	035	I007583860	4,557.00	4,557.00	Plastic Recycling Bags for WVU
4	034	035	I007976563	2,921.75	2,921.75	Cases of Plastic Bags and Liners for Marshall
5	037	053	I008682762	2,100.00 100.92	2,200.92	Recycled Mood Pencils
6	021	058 053	E000659026	297.00 5.00	302.00	Oak Desk
7	020	061	I007596968	1,160.00	1,160.00	HP 4650 Fuser/ Part to Repair Printer
				<u>\$33,881.77</u>	<u>\$33,881.77</u>	

2. Test of Miscellaneous Expenses – Object Code Misclassification

We noted seven transactions totaling \$29,393.03 were misclassified (100%). The schedule below details the misclassification by object code noted during our test of expenditures:

#	Agency Code	Audited Code	FIMS ID #	Misclassified Transaction Amount	Invoice Amount	Description of Purchase
1	051	035	I007599529	\$23,641.05	\$23,641.05	Recycling Containers for WVU
2	051	130	E000709208	\$1,550.00	\$1,550.00	Groundwater Protection Fee, WVNPDES Annual Permit Fee
3	051	130	E000750440	\$1,550.00	\$1,550.00	Groundwater Protection Fee, WVNPDES Annual Permit Fee

#	Agency Code	Audited Code	FIMS ID #	Misclassified Transaction Amount	Invoice Amount	Description of Purchase
4	051	130	E000653962	\$ 1,050	\$ 1,050.00	Groundwater Protection Fee, WVNPDES Annual Permit Fee
5	051	130	E000709123	1,050.00	1,050.00	Groundwater Protection Fee, WVNPDES Annual Permit Fee
6	051	035 053	I009143236	495.00 49.95	544.95	Custom Mix Wildflower Seeds
7	051	054	I007813766	7.03	6,521.00	Red Hat Computer Software
				\$29,393.03	\$35,907.00	

3. Test of Vehicle Repair Expenses – Object Code Misclassification

We noted six transactions totaling \$23,498.96 (37.4%) of the 31 transactions totaling \$62,797.95 tested were misclassified. The schedule below details the misclassification by object code noted during our test of expenditures:

#	Agency Code	Audited Code	FIMS ID # or S-DOC ID #	Misclassified Transaction Amount	Invoice Amount	Description of Purchase
1	065	065 036	S005628414	\$ 672.25 426.16	\$ 1,098.41	Maintenance and Repair of ATV
2	065	058	S005075144	1,758.45	1,758.45	Truck Topper
3	065	036	I009151803	3,060.03	3,060.03	Maintenance
4	065	075	I008127255	13,415.17	13,415.17	Transfer of Crane from Old Truck to New Truck
5	065	036	I007992499	1,952.00	1,952.00	Maintenance of Boat
6	065	058	S004195587	2,214.90	2,214.90	Truck Topper
				\$23,498.96	\$23,498.96	

4. Test of Travel, Training, & Development Expenses – Object Code Misclassification

We noted five transactions totaling \$10,138.00 (48.3%) of the 40 transactions totaling \$20,982.61 tested were misclassified. The schedule below details the misclassification by object code noted during our test of expenditures:

#	Agency Code	Audited Code	FIMS ID #	Misclassified Transaction Amount	Invoice Amount	Description of Purchase
1	026	083	I009312643	\$3,000.00	\$3,000.00	Lodging/Non-Employees REAP Annual Conference
2	026	083	I009121399	\$2,125.00	\$2,125.00	REAP/AWVSWA Conference Registration
3	026	083	I008113309	\$2,695.00	\$2,695.00	REAP/Registration Fee for REAP Scholarships

<u>#</u>	<u>Agency Code</u>	<u>Audited Code</u>	<u>FIMS ID #</u>	<u>Misclassified Transaction Amount</u>	<u>Invoice Amount</u>	<u>Description of Purchase</u>
4	026	083	I008081306	\$2,160.00	\$2,160.00	REAP/Lodging for Non-Employees
5	026	083	E000675901	<u>158.00</u>	<u>158.00</u>	Pipestem Resort State Park/Lodging For Non-Employee
				<u>\$10,138.00</u>	<u>\$10,138.00</u>	

5. Test of Purchasing Card Transactions – Object Code Misclassification

We noted 13 transactions totaling \$5,164.80 (14.3%) of the 119 transactions totaling \$36,152.41 tested were misclassified. The schedule below details the misclassification by object code noted during our test of expenditures:

<u>#</u>	<u>Agency Code</u>	<u>Audited Code</u>	<u>S-DOC ID #</u>	<u>Misclassified Transaction Amount</u>	<u>Invoice Amount</u>	<u>Description of Purchase</u>
1	023	030	S004218153	\$ 360.00	\$ 360.00	Digital Copier Rental
2	036	067	S003888437	89.93	89.93	O-rings, Hose, Hose End
3	058	068	S004464732	195.00	195.00	Probe Repair
4	058	068	S004574465	1,578.80	1,578.80	Packing & Liner to repair Gauge
5	034	037	S003758738	62.54	62.54	4-H Camp Workshop
6	051	034		17.97		Cleaner, Oil, Keys, File Sharpener
7	051	051	S003783325	31.31	49.28	
8	051	037	S003898545	10.28	10.28	Water & Ice
9	034	035	S003959516	1,960.00	1,960.00	Promo. Pins
		037		65.40		
		020		127.40		
9	051	053	S004207176	10.84	203.64	Sludge Nabber, Notebook, Pen
		034		31.12		
10	051	053	S003774717	4.37	35.49	Name pins
11	051	037	S003869569	1.98	1.98	Ice
		058		499.99		
12	070	020	S004096886	81.88	581.87	Fax Machine & Toner
13	051	058	S004469599	<u>35.99</u>	<u>35.99</u>	Mag MT 39" Whip
				<u>\$5,164.80</u>	<u>\$5,164.80</u>	

6. Test of Grant Disbursements – Object Code Misclassification

We noted one transaction totaling \$204.91 of the 30 transactions totaling \$583,792.09 tested was misclassified. The schedule below details the misclassification by object code noted during our test of expenditures:

<u>#</u>	<u>Agency Code</u>	<u>Audited Code</u>	<u>S-DOC ID #</u>	<u>Misclassified Transaction Amount</u>	<u>Invoice Amount</u>	<u>Description of Purchase</u>
1	083	035	S005447327	<u>\$204.91</u>	<u>\$204.91</u>	Fishing Poles Used As Prizes
				<u>\$204.91</u>	<u>\$204.91</u>	

7. Test of Vehicle Premium Payments – Object Code Misclassification

We noted one transaction totaling \$176.55 of the 21 transactions totaling \$2,898,980.00 tested was misclassified. The schedule below details the misclassification by object code noted during our test of expenditures:

<u>#</u>	<u>Agency Code</u>	<u>Audited Code</u>	<u>FIMS ID #</u>	<u>Misclassified Transaction Amount</u>	<u>Invoice Amount</u>	<u>Description of Purchase</u>
1	023	032	E000547214	\$176.55	\$168,029.50	BRIM/Insurance Coverage
				\$176.55	\$168,029.50	

8. Test of Higher Education Contract Expenses – Object Code Misclassification

We noted one transaction totaling \$71.60 (100%) was misclassified. The schedule below details the misclassification by object code noted during our test of expenditures:

<u>#</u>	<u>Agency Code</u>	<u>Audited Code</u>	<u>S-DOC ID #</u>	<u>Misclassified Transaction Amount</u>	<u>Invoice Amount</u>	<u>Description of Purchase</u>
1	028	025	S004414362	\$71.60	\$71.60	Water Analysis
				\$71.60	\$71.60	

9. Test of Payroll Transfers – Fund Misclassification

We noted one transfer totaling \$21.92 was misclassified. The schedule below details the misclassification by fund noted during our test of expenditures:

<u>#</u>	<u>Agency Fund</u>	<u>Audited Fund</u>	<u>FIMS ID #</u>	<u>Misclassified Transaction Amount</u>	<u>Description</u>
1	3312	8708	E000668022	\$21.92	Salary Allocation to Golden Project
				\$21.92	

Criteria:

The Expenditure Schedule Instructions state in part:

“020 - *Office Expenses*: Those supplies normally used in the operation of an office and are primarily considered expendable in nature...”

“021 - *Printing and Binding*: All types of printing and supplies for printing, duplicating and reproducing, binding of printing, and rebinding of books...”

“023 - *Utilities*: Sanitation fees, trash/garbage disposal, fire service, police protection fees, septic tank maintenance, and cable television charges...”

“025 - *Contractual and Professional*: Services performed by individuals or firms considered to be professional or semiprofessional in nature...”

“026 - *Travel*: Payments for authorized in-state and out-of-state travel expenses in accordance with the State Travel Regulations...This object code is applicable to State employees, board members, commission members, consultants, contractors, and students, patients, and inmates of State schools, hospitals, and institutions...”

"028 - *Higher Education Interagency Contractual Agreements and Fees*: Expenses for services received from administratively linked two year/four year institutions of higher education."

"030 - *Rentals (Machine and Miscellaneous)*: Rental of data processing equipment, computers, printers, copying machines, word processors, telephones, safe deposit boxes, water cooler or any other equipment not owned by the spending agency."

"032 - *Fire, Auto, Bond and Other Insurance*: All premiums for casualty, liability, vehicle insurance, employee bond and fidelity insurance..."

"034 - *Clothing, Household and Recreational Supplies*: Articles of clothing purchased or rented for state employees..."

"035 - *Advertising and Promotional*: ...radio and television spots, special sponsorships, publicity advertising to include pamphlets, road maps, and bill boards."

"036 - *Vehicle Operating Expense*: For vehicle operating expenses...Oil, grease, minor maintenance repairs such as headlight replacement, tire repair, wheel alignment, windshield wipers, etc."

"037 - *Research, Educational, and Medical Supplies*:

Research: Material primarily used for a laboratory environment.

Educational: Material primarily used for, but not limited to classroom instruction, pencils, papers, erasers."

"051 - *Miscellaneous*: ...those supplies or services which cannot be classified under any other object code..."

"053 - *Postal and Freight*: Charges for either shipping or receiving material..."

"054 - *Computer Supplies and Equipment*: ...packaged computer software and licenses..."

"058 - *Miscellaneous Equipment Purchases*: All purchases of equipment with a dollar value less than \$5,000."

"061 - *Office and Communication Equipment Repairs*: Labor and/or materials used in the repair of an office machine such as a typewriter, computer, calculator, copying machine..."

"065 - *Vehicle Repairs*: Repair of vehicles used primarily for individual(s) transportation...to be used for repairs considered major repairs as opposed to regular maintenance."

"067 - *Farm and Construction Equipment Repairs*: Labor and/or material for repair and maintenance of heavy equipment such as dozers, tractors, end loaders, riding lawn mowers, etc."

"068 - *Other Repairs and Alterations*: Labor and/or materials for repairs to power tools, hand tools, and miscellaneous small equipment..."

"070 - *Office and Communication Equipment*: Any article that is purchased for use or is to be located within the office... (**Value greater than \$5,000** for each item.)"

"075 - *Vehicles*: Vehicles that are purchased primarily for transportation of people and light hauling..."

"083 - *Grants, Awards, Scholarships, and Loans*: Disbursement of funds for the payment of grants... the payment of agricultural awards, awards for contests,

educational scholarships, entitlement grants, financial aid for students, Upward Bound stipends, economic loans or other appropriate authorized expenditure.”
“130 - *Reclamation of Non-State Owned Property*: Labor and/or materials to return areas disturbed by industries, businesses or private citizens to environmentally regulated standards.”

W.Va. Code §5A-8-9(b), as amended, states in part:

“The head of each agency shall:

... (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities...”

Cause: According to the Administrative Services Manager I over Accounts Payable, some of the causes for the object code misclassifications were due to the State Auditor’s Office advising them to use a certain object code, some items were always coded to a certain object code in the past, the program office had a lack of knowledge of object code definitions, errors were made by DEP personnel coding the invoices, and data was input incorrectly into WVFIMS.

According to the Administrative Services Manager I over Payroll, the cause for the misclassification of salary allocation was the Payroll Department relied on program office accuracy and did not double check the transfer figures.

Additionally, we believe the aforementioned misclassifications resulted from a lack of management oversight over the coding of invoices and reliance on program accuracy.

Effect: Misclassification of transactions results in inaccurate reporting for financial purposes as well as DEP’s noncompliance with the Expenditure Schedule Instructions.

Recommendation: We recommend DEP strengthen internal controls over classification of expenditures to ensure transactions are made in accordance with the Expenditure Schedule Instructions. We also recommend DEP stays consistent when choosing Object Codes for similar items.

Spending Unit’s
Response:

DEP agrees with most of this finding. Exceptions are noted below.

It is noted that these are all legitimate purchases that could reasonably be paid using different object codes.

1. Test of Cash Disbursements

1.-4. *DEP disagrees with this statement:*

The type of items purchased, containers and plastic bags, can reasonably be coded against object code 034. Accounts Payable was unaware of any logos or promotional imprints on the containers or bags.

5. *DEP disagrees with this statement:*

Pencils were purchased. Object code 037 is a logical choice. The shipping could have been coded to object code 053. Splitting out the postage charge was not enforced until August/September 2008 (documentation provided to the auditors).

6. *The desk should have been object code 058. Shipping was split out beginning in 2008.*

7. *DEP disagrees with this statement:*

Fuser is much like toner. It is a wearing part that needs to be replaced after so many prints. That is why object code 020 was used.

2. Test of Miscellaneous Expenses – Object code Misclassification

1. *DEP disagrees with this statement:*

These were the first containers purchased and we were instructed to use object code 051 by the Auditor's Office.

2.-5. *DEP disagrees with this statement:*

In house permits from one program to another are always paid using object code 051.

6. *DEP disagrees with this statement:*

Wildflower mix was purchased. Accounts Payable was unaware of any logos or promotional imprints to qualify it to be paid using object code 035. Shipping was split out beginning in 2008.

7. *The Computer Software should have been coded to 054. It appears to be a typographical error.*

3. Test of Vehicle Repair Expenses – Object Code Misclassification

1. *Repairs to an ATV should have been split to 065 and 036.*
2. *The topper should have been paid using object code 058 instead of 065.*
3. *DEP disagrees with this statement:*

Invoice#I009151803 is "materials and labor to repair a 1996 Ford F250 Truck". The labor amount was \$1,725.45 & the materials were \$1,334.58. The repair involved replacing ball joints, wheel bearing axle, housing axle joints, drag link alignment and mirror. This was not routine maintenance.

4. *DEP disagrees with this statement:*

This purchase was for putting a crane off an old truck onto a new chassis of another. DEP believes 065 is a more accurate object code to use.

5. *DEP disagrees with this statement:*

DEP does not consider the repairs done to the boat as routine. Object code 065 should be the appropriate object code to use.

6. *The topper should have been paid using object code 058 instead of 065.*

4. Test of Travel, Training, & Development Expenses – Object Code Misclassification

- 1.-4. *DEP disagrees with this statement:*

These charges are not true educational scholarships. This expenditure was for conference registration and lodging. DEP will change the wording in the grant to avoid this misunderstanding in the future. Object 026 is correct.

5. Test of Purchasing Card Transactions – Object Code Misclassification

- 1.-6. *DEP agrees with the auditor's recommendation.*
7. *Water and Ice have been consistently coded to object code 051.*
- 8-10 *DEP agrees with the auditor's recommendation.*
11. *Water and Ice have been consistently coded to object code 051.*
12. *DEP agrees with the auditor's recommendation.*
13. *DEP agrees with the auditor's recommendation.*

6. Test of Grant Disbursement – Object Code Misclassification

1. *DEP agrees with the auditor's recommendation.*

7. Test of Vehicle Premium Payments – Object Code Misclassification

1. This was a typographical error.

8. Test of Higher Education Contract Expenses – Object Code Misclassification

1. DEP agrees with the auditor's recommendation.

9. Test of Payroll Transfers – Fund Misclassification

1. DEP agrees with the auditor's recommendation.

DEP disagrees with the assumption that one of the causes for the misclassification is lack of management oversight and reliance on program accuracy. The Accounts Payable Section audits all invoices for accuracy, contacting the program for description of purchases to clarify the needed object code and contacting the WVSAO for advice when needed.

Finding 10**Misclassified Revenues**

Condition:

1. Test of Miscellaneous Revenues & Administrative Settlements – Revenue Source Code Misclassification

We noted seven transactions totaling \$3,257.00 (83.2%) of the ten transactions totaling \$3,915.49 tested were misclassified during fiscal years 2007 and 2008. The schedule below details the misclassification by revenue source code noted during our test:

<u>#</u>	<u>Agency Code</u>	<u>Audited Code</u>	<u>Doc ID#</u>	<u>Amount</u>
1	282	252	D001324081	\$2,650.00
2	282	399	D001252817	337.50
3	282	399	D001252813	7.75
4	282	399	D001253240	21.25
5	282	399	D001257371	71.25
6	282	399	D001259830	124.50
7	282	399	D001266971	44.75
				<u>\$3,257.00</u>

2. Test of Grant Disbursements – Revenue Source Code Misclassification

During our audit of Object Code 083 Grant Expenditures and review of the corresponding grant files, we noted one grant reimbursement totaling \$3,000.00 during fiscal year 2007-2009 was misclassified as Revenue Source Code 399 – Miscellaneous Revenues. Due to the fact that this money constituted a reimbursement for unexpended grant funds and there is an object code designated for Grants, Awards, Scholarships, and Loans, we believe that DEP should not be classifying these monies as revenue. The schedule below details the misclassification by revenue source code noted during our test:

<u>#</u>	<u>Agency Code</u>	<u>Audited Code</u>	<u>Doc ID#</u>	<u>Amount</u>
1	399	083	D001537497	\$3,000.00
				<u>\$3,000.00</u>

3. Test of Travel, Training, & Development Expenses – Object Code Misclassification

We noted one reimbursement transaction totaling \$89.60 during fiscal years 2007-2009 was misclassified. The schedule below details the misclassification by object code noted during our test:

<u>#</u>	<u>Agency Code</u>	<u>Audited Code</u>	<u>Doc ID#</u>	<u>Amount</u>
1	026	083	D001374755	\$89.60
				<u>\$89.60</u>

Criteria:

The Expenditure Schedule Instructions state in part:

“026 - *Travel*: Payments for authorized in-state and out-of-state travel expenses in accordance with the State Travel Regulations...”

“083 - Grants, Awards, Scholarships, and Loans: Disbursement of funds for the payment of grants... the payment of agricultural awards, awards for contests, educational scholarships, entitlement grants, financial aid for students, Upward Bound stipends, economic loans or other appropriate authorized expenditure.”

“696 – Other Collections, Fees, Licenses, and Income: Miscellaneous collections, fees, licenses, and income.”

DEP Extended Revenue Codes state in part:

“252 – Fees”

“282 – Administrative Settlements”

“399 – Miscellaneous”

Cause: According to the Administrative Services Manager I over Accounts Receivable, during the audit period the correct revenue source for FOIA’s was 399 not 282. As for why 282 was used instead of 399, DEP is unable to determine, but speculated that it was possible someone used the wrong code in error before learning the correct code to use; the transaction where 282 was used instead of 252 was the result of a typo.

For the \$3,000, the Administrative Services Manager over Accounts Receivable stated the misclassification was due to an error and clarification of coding classification for revenues and reimbursements has been made with the program office.

DEP also stated the reimbursement for \$89.60 was coded as 026 rather than 083 because the Division of Natural Resources (DNR) had done it that way in the past (the REAP program was transferred to DEP from DNR in 7/06).

Effect: Misclassification of transactions results in inaccurate reporting for financial purposes as well as DEP’s noncompliance with the Expenditure Schedule Instructions and the Extended Revenue Codes.

Recommendation: We recommend DEP strengthen internal controls over classification of revenues to ensure transactions comply with the Expenditure Schedule Instructions as well as DEP’s own Extended Revenue Codes and audit the coding. Further, we recommend DEP add descriptions to the current Extended Revenue Codes stating the purpose each extended code serves to ensure accurate coding. We also recommend DEP stays consistent when choosing Extended Revenue Codes and Object Codes for similar items.

Spending Unit's
Response:

DEP agrees with this finding.

3. Test of Travel, Training & Development Expenses-Object Code
Misclassification

DEP agrees with these findings and believes communication with the program offices has already corrected issues like and similar to these. The Accounts Receivable staff has been instructed to audit each deposit and not accept a revenue source as correct. The agency will add descriptions to the extended revenue sources to aid the program staff in their initial coding of the transactions.

Finding 11

No Reconciliation of Investments

Condition: During our test of Investment Earnings during 2007-2010 for General Ledger Account (GLA) 1020 Cash with the Treasurer for Fund 3217 and General Ledger Account (GLA) 1110 Cash with BTI for Fund 3217 during fiscal year 2010, we noted a difference of \$7,564.00 on DEP's internal investment records for GLA 1020-3217 and a difference of \$5,789.00 on DEP's internal investment records for GLA 1110-3217. This difference resulted from an investment and subsequent reversal on the same day of \$5,789.00 plus interest totaling \$1,775.00 that would have been earned according to DEP's investment records. DEP did not reconcile the ending cash balance in WVFIMS at fiscal year-end to the fiscal year-end totals on the DEP investment records or the discrepancy would have been found.

Criteria: W.Va. Code §5A-8-9(b), as amended, states in part:

"The head of each agency shall:

... (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities..."

Cause: According to the Administrative Services Manager over Accounts Receivable, he is unsure why the investment was made and then reversed. Further, he is unsure why DEP personnel did not make the records reflect the reversal of the investment, which resulted in the appearance that the money was invested when it was not. He also stated DEP personnel are supposed to reconcile the ending balances daily and should have caught the discrepancy in the records.

Effect: As a result of not reconciling the cash balance in WVFIMS to the DEP investment records, the internal records for General Ledger Account 1020 - Fund 3217 are understated by \$7,564.00 (\$5,789 investment and \$1,775 interest that would have been earned based on DEP's records). Additionally, the internal records for General Ledger Account 1110 - Fund 3217 are overstated by \$5,789.00. A lack of reconciliation causes investment calculation problems because each subsequent investment is determined by the actual cash balance available. If investment amounts are not accurately reflected in the internal financial records, there is a possibility the financial statements might not be presented fairly.

Recommendation: We recommend that DEP comply with W.Va. Code §5A-8-9(b), as amended, and maintain adequate documentation to support investments and reconcile balances on the internal records to the actual cash balance in WVFIMS.

Spending Unit's
Response:

DEP agrees with this finding.

The internal ledger is an excel spreadsheet. The error was in the balance amount on the spreadsheet between principle and interest. The cash balance was always correct in fund 3217. DEP has implemented a process where investments are balanced daily, and the cash and investment balances are verified.

DEP disagrees with the effect that financial statements might not be presented fairly. Financial statement information is taken directly from WVFIMS and the cash balance was always correct in fund 3217.

Finding 12

Lack of Documentation over Vehicle Accidents

Condition: During our audit of vehicle repair expenses for DEP as a whole for July 1, 2005 – March 3, 2010, we noted two instances totaling \$3,460.05 where one employee’s vehicle accident file was incomplete and one employee’s file could not be located. Therefore, we could not determine if these vehicle repair expenses were in compliance with the W.Va. Code, Purchasing Division’s Policies and Procedures, and WVDEP Vehicle Policy.

Criteria: The W.Va. Code § 5A-8-9(b), as amended, states in part:

“The head of each agency shall:

... (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities...”

Section 4.5 of the DEP Vehicle Policy states in part:

“A driver file will be maintained by the DEP Fleet Manager for each permanently assigned driver. . . . Each file will include the following:

1. Copies of all Motor Vehicle Records from the DMV
2. A record of all accidents.
3. A record of all agency actions involving the driver and the vehicle. . . .”

Cause: According to the DEP Fleet Manager, he cannot recall why one accident file was incomplete. In regards to the missing file, he was not made aware that an accident had occurred and thus, did not have an accident file.

Effect: As a result of the lack of documentation, we were unable to determine if repair expenses totaling \$3,460.05 were in compliance with W.Va. Code, DEP Vehicle Policy, and the Purchasing Division’s Policies and Procedures.

Recommendation: We recommend DEP maintain records of vehicle accidents/incidents in accordance with W.Va. Code §5A-8-9(b), as amended, the DEP Vehicle Policy, and the Purchasing Division’s Policies and Procedures.

Spending Unit’s
Response:

DEP agrees with this finding.

DEP has located one of the missing files and it has been supplied to the auditors for review. In the second instance, a vehicle accident report was not filed however, the damage was repaired. The driver has been advised of the proper procedures to follow in the event of future accidents and the requirement to report all accidents within 48 hours to the Fleet Manager.

Finding 13

Miscalculation of Payroll Expenditures

Condition:

1. Test of Payroll Disbursements – Incorrect Pay of Overtime

We noted six employees of the nine DLR employees tested were incorrectly compensated for overtime. Between these six employees nine overtime transactions were incorrect by a total overpayment of \$20.96 and a total underpayment of \$338.57. The transactions are detailed in the following list:

- Two employees had timesheets that did not match their overtime forms for three transactions.

	<u>Timesheet Hours</u>	<u>Overtime Form Hours</u>	<u>Audited Overtime Pay</u>	<u>Actual Overtime Paid</u>	<u>Difference Overpaid (Underpaid)</u>
Employee 1	54.00	53.00	\$1,525.37	\$1,496.99	(\$28.38)
Employee 2	35.70	35.40	666.36	660.79	(5.60)
Employee 2	1.70	1.90	31.73	35.47	3.74
Underpayment					(\$30.24)

- Two employees had timesheets and overtime forms that matched, yet they were still paid the incorrect amount in a total of two transactions.

	<u>Timesheet Hours</u>	<u>Overtime Form Hours</u>	<u>Audited Overtime Pay</u>	<u>Actual Overtime Paid</u>	<u>Difference Overpaid (Underpaid)</u>
Employee 3	6.00	6.00	\$141.38	\$ 94.26	(\$47.12)
Employee 4	5.75	5.75	197.94	215.16	17.22
Underpayment					(\$29.90)

- One employee had an overtime form with one less hour worked than his timesheet and he was paid for the time on the form. He had an amended overtime form with the extra hour worked on file, but there is no record of the employee getting paid for that hour worked.

	<u>Timesheet Hours</u>	<u>Overtime Form Hours</u>	<u>Audited Overtime Pay</u>	<u>Actual Overtime Paid</u>	<u>Difference Overpaid (Underpaid)</u>
Employee 5	20.00	19.00	\$500.88	\$475.95	(\$24.93)

- One employee showed three hours of overtime worked on his timesheet, but there was no overtime form and no record of him getting paid for those three hours worked.

	<u>Timesheet Hours</u>	<u>Overtime Form Hours</u>	<u>Audited Overtime Pay</u>	<u>Actual Overtime Paid</u>	<u>Difference Overpaid (Underpaid)</u>
Employee 5	13.00	10.00	\$289.54	\$222.75	(\$66.79)

- The incorrect calculation of overtime in two transactions led to one employee being overpaid \$136.00 in regular pay and underpaid \$165.75 in overtime pay for a total underpayment of \$29.75.

	<u>Timesheet Hours</u>	<u>Overtime Form Hours</u>	<u>Audited Overtime Pay</u>	<u>Actual Overtime Paid</u>	<u>Difference Overpaid (Underpaid)</u>
Employee 6	12.00	0.00	\$153.00	\$51.00	(\$102.00)
Employee 6	8.00	0.00	\$102.00	\$38.25	(63.75)
Underpayment					(\$165.75)

2. Test of Retirement and Resignation Pay – Incorrect Pay of Annual Increment

We noted one employee of the six DLR employees tested was not properly compensated for pro-rated annual increment at separation from employment. The transaction is detailed in the following table:

<u>Actual Pro-Rated Annual Increment Paid</u>	<u>Audited Pro-Rated Annual Increment Pay</u>	<u>Difference Overpaid (Underpaid)</u>
\$0.00	\$99.38	(\$99.38)

Criteria:

Part 778, Subpart D, Section 315 of the Fair Labor Standards Act (FLSA) of 1938, as amended, states in part:

“In determining the number of hours for which overtime compensation is due, all hours worked (see Sec. 778.223) by an employee for an employer in a particular workweek must be counted. Overtime compensation, at a rate not less than one and one-half times the regular rate of pay, must be paid for each hour worked in the workweek in excess of the applicable maximum hours standard.”

Policy 3.5 of the DEP Attendance and Overtime Policy states in part:

“Overtime Pay Administration

a.) West Virginia Minimum Wage and Maximum Hour Standards mandate that employees who are not exempted from the overtime provisions thereof be paid at the rate of one and one-half their hourly wage, for any hours actually worked in excess of forty (40) in a workweek.”

Section III.B of the W.Va. Division of Personnel (DOP) Annual Increment Policy states in part:

“Separating employees shall be paid the annual increment on a pro rata basis for the portion of service rendered by the employee during the current fiscal year of employment.”

W.Va. Code §5-5-2, as amended, states in part:

“Every eligible employee with three or more years of service shall receive an annual salary increase...”

Cause: According to the Administrative Services Manager I over the Payroll Department, one of the causes for incorrect payments of overtime was the Payroll Department did not have access to timesheets until mid-2008 and thus, could not compare overtime forms to actual hours worked. Some of the other reasons include entry errors, missing timesheets, employees not submitting overtime forms, etc. However, DEP stated overtime forms are now checked against timesheets and corrections are secured as needed. It was further stated the incorrect pay of pro-rated annual increment was an error on the part of the Payroll Department.

Effect: Failure to compensate employees for overtime and annual increment payments creates a disadvantage to the employees and results in inaccurate financial reporting.

Recommendation: We recommend DEP comply with the FLSA, as amended, and Policy 3.5 of the DEP internal Attendance and Overtime Policy and pay all non-exempt employees overtime compensation at one and one-half the rate of regular pay for all hours worked over 40 hours. We further recommend DEP continue the new policy of comparing overtime forms to timesheets.

We also recommend that DEP comply with W.Va. Code §5-5-2, as amended, and the WV DOP Annual Increment Policy and compensate employees for required annual increment payment.

Spending Unit's
Response:

DEP agrees with this finding.

1. Test of Payroll Disbursements-Incorrect Pay of Overtime

The issue has been resolved by having all timesheets accessible to HR and having payroll audit all overtime against ERIS time. DEP continues to improve this process by developing the ERIS time and activity system, to feed overtime directly from the time keeping system to the payroll system.

2. Test of Retirement and Resignation Pay-Incorrect Pay of Annual Increment

For pro-rata increment DEP has continued to improve this process and the proofing of all calculations within payroll for improved accuracy.

Finding 14**Incorrect Ending Leave Balances**

Condition:

During our audit of DLR sick and annual leave for fiscal years 2007-2009, we tested 15 of 115 employees and noted the ending balances as of June 30, 2009 was incorrect for two employees' annual leave balances, one employee's sick leave balance, one employee's compensatory time balance, and four employees' holiday time balances. The incorrect ending balances resulted from the following errors in the State Accounting System (SAS) records:

A. Errors for Incorrect Ending Annual Leave Balances

We noted two instances where employees' ending balances were understated by a total of 7 hours (2 hours and 5 hours) because both employees were accruing annual leave at 6 rather than 7 hours.

B. Errors for Incorrect Ending Sick Leave Balances

We noted one instance where an employee took 8 hours of family sick leave, but 16 hours were deducted from the SAS records resulting in an understated ending sick leave balance of 8 hours.

C. Errors for Incorrect Ending Compensatory Time Balance

We noted one instance where DEP recorded an employee's compensatory time incorrectly in the SAS records resulting in an overstated ending compensatory time balance of 7 hours.

<u>Pay Period</u>	<u>Earned According to Time Sheet</u>	<u>Recorded in SAS Records</u>	<u>Difference</u>
7/14/06	3.00 hours	4.50 hours	1.5 hours
10/31/06	8.00 hours	13.5 hours	5.5 hours

D. Errors for Incorrect Ending Holiday Time Balances

We noted four employees' time sheets indicated a total of 46.75 hours of holiday time earned, but not recorded by DEP in the SAS records and thus, ending holiday time balances were understated as follows:

	<u>Date of Holidays</u>	<u>Hours Earned, But Not Recorded</u>
Employee 1	11/10/06, 2/19/07 & 9/3/07	24.00
Employee 2	6/20/07	8.00
Employee 3	1/15/07	8.00
Employee 4	10/8/07	6.75

During our audit of DLR sick and annual leave, we also noted DEP does not require employees to attest to their ending balances at least twice a year and thus, does not ensure the accuracy of all employees' ending balances of annual leave, sick leave, compensatory time and holiday time.

Criteria: Title 143, Series 1, Section 14.3 of Legislative Rules states in part:

“(a)... The table below lists the rates of accrual according to the employee's length of service category and the number of hours of annual leave that may be carried forward from one calendar year to another. Annual leave is accrued at the end of each pay period or on the last workday for separating employees...

Length of Service Category Hours Equal To	Accrual Rate:
• 5 years but less than 10 years of qualifying service	1.50 days/month
• 10 years but less than 15 years of qualifying service	1.75 days/month

Legislative Rule, Title 143, Series 1, Section 14.15 states in part:

“... Supervisors and employees shall attest to the accuracy of the records on a periodic basis, but not less than twice annually.”

Cause: According to the Administrative Services Manager I over the Payroll Department, some of the reasons for the errors noted above include miscalculations of years of service, the Payroll Department did not have access to audit time sheets against overtime/compensatory time forms and time was recorded into SAS from the overtime/compensatory time forms not the employee time sheet, if employees did not submit forms no time was earned in SAS, and human error. It was further stated that agency cannot determine the correct hours at this late of date.

Effect: As a result of miscalculating years of service, employees weren't given annual leave they were due according to statute. As a result of incorrect posting of sick leave, DEP took more from an employee than allowed. As a result of incorrect postings of compensatory and holiday time, employees were not being compensated for time given to DEP. In one case it was the opposite and DEP gave an employee more compensatory time than what was due.

Recommendation: We recommend DEP comply with Legislative Rule, Title 143, Series 1, Section 14.3 and 14.15 and determine proper accrued annual leave and comp time/holiday time. In addition, we recommend the Payroll Department periodically audit time sheets against overtime/compensatory time forms. We

further recommend DEP to make amends where possible, require employees to check their balances regularly, and require employees to sign off on the accuracy of their balances at least twice a year.

Spending Unit's
Response:

DEP agrees with this finding.

Human error occurred in manually entering information into the SAS leave system. DEP has modified the system to electronically transfer leave data from the timekeeping system to the SAS leave system and continues to implement processes and procedures to eliminate human error in the system. Employees have continuous access to their leave balances on a daily basis in the ERIS time keeping system which should provide sufficient validation of leave balances. Employees who believe their leave balances have an error contacts the leave coordinator who verifies accuracy of the balances.

DEP continues to improve the processes for calculating years of service and leave accruals and provide up to date access to accrual date information in the ERIS time keeping system, allowing full transparency to employees so that they may advise HR if they believe there is an error.

DEP continues to improve the time keeping system to feed more data directly to the leave system. The most recent enhancement feeds holiday time accrual to the leave system directly from employee time entry into the timekeeping system. This negates the need for the employee to complete any additional paperwork to receive credit for the holiday time worked.

DEP emails employees near the beginning of each year to advise them that the yearend leave processes are complete and advises them to check their leave balances for accuracy. DEP has not required them to each attest to the accuracy but have focused on working with employees who have reported potential errors to determine correct leave balances at the beginning of each year.

Finding 15 **Improper Travel Reimbursements**

Condition: During our audit of 40 travel expenditures during fiscal years 2007-2009, DEP had improper travel reimbursements for the following:

1. Did not submit travel reimbursement requests within 15 days in two instances of 40 totaling \$330.77, and
2. Reimbursed employees for incorrect mileage in two instances totaling \$602.09 resulting in a total overpayment to the employees of \$70.18.

Criteria: The West Virginia State Travel Policy states in part:

“2.5 - ... The state agency shall audit and submit an accurate expense account settlement for reimbursement to the Auditor's Office within fifteen (15) days after completion of travel.”

“4.2.4.1 - ... Reimbursement will be made at the prevailing rate per mile established by the Travel Management Office, excluding normal daily commuting mileage, for actual miles traveled using the shortest practicable route to the point of arrival at the traveler's destination...”

Cause: According to the Administrative Services Manager over Accounts Payable, travel reimbursements were not submitted within 15 days because the traveler did not submit the reimbursement timely. In regards to the improper reimbursements, DEP believes the proper mileage reimbursement rates were used.

Effect: By taking longer than 15 days to submit travel reimbursement requests to the Auditor’s Office, WVFIMS will not accurately reflect DEP’s financial state, resulting in inaccurate financial statements. Also, not reimbursing travel in a timely manner may cause undue hardship to the employee. By reimbursing mileage that exceeded the shortest practicable route, \$70.18 was spent by the State that should not have been overstating travel by this amount in the financial statements.

Recommendation: We recommend DEP comply with sections 2.5 and 4.2.4.1 of the West Virginia State Travel Policy. All travel reimbursement requests must be submitted to the Auditor’s Office within 15 days of the last day of travel and employees must travel the shortest practicable route. Further, we recommend the addresses of travel locations be recorded on the travel form to allow an independent person checking the form to ensure correct mileage is stated.

Spending Unit’s
Response: *DEP agrees with part of this finding. The exception is noted below.*

1. *DEP will continue to make travelers aware of the requirement to submit their travel within 15 days.*
2. *DEP disagrees with this statement: The correct mileage was reimbursed. It appears that the traveler made multiple stops but these were not clearly documented. DEP will instruct travelers to fill out their travel reimbursement forms more clearly to avoid future questions.*

Finding 16**Lack of Documentation Pertaining to Payroll**

Condition:

1. Lack of Documentation to Support Payroll Transactions

During our audit of DEP payroll transactions during fiscal years 2007-2009, we tested 255 transactions for 14 employees totaling \$114,213.94 and noted the following issues:

- Timesheets were unavailable for three employees, two non-exempt and one exempt, for 11 regular pay transactions totaling \$10,438.50 and four overtime transactions totaling \$580.13.
- Overtime slips were unavailable for two employees to support four transactions totaling \$751.34.
- Seven of 14 employees tested did not have a White Collar Exemption form on file to support 153 transactions totaling \$54,487.78.

2. Lack of Documentation to Support Payroll Deductions

During our audit of DEP payroll deductions during fiscal years 2007-2009, DEP was unable to provide adequate documentation to support payroll deductions for transactions totaling \$11,309.05 (55%) for five employees out of transactions totaling \$20,476.12 for 12 employees tested. The missing documentation is detailed in the following table:

	<u>Gross Amount Paid</u>	<u>Type of Missing Documentation</u>
Employee #1	\$ 2,201.00	Life Insurance Form
Employee #2	2,054.05	Life Insurance Form & Flex Benefits Form
Employee #3	1,838.00	Health Insurance Form
Employee #4	1,692.00	Life Insurance Form, W-4, & WV IT-104
Employee #5	3,524.00	State Employee Spouse Verification, W-4, & WV IT-104
Total	<u>\$11,309.05</u>	

3. Unable to Determine Preapproval of Overtime

During our audit of DEP proper pay of overtime during fiscal years 2007-2009, DEP was unable to provide adequate documentation to support preapproval of overtime for 174 transactions (100%) totaling \$31,732.57. According to DEP, a new procedure was implemented on August 1, 2009 that requires written approval of overtime prior to it being worked. We reviewed four overtime pay transactions for two employees after this date to verify this new procedure and found that 50 percent of the preapproval forms were not signed and dated by the Division Director until over a month after the overtime was worked. There

was a note beside the Division Director's signature stating there was "prior verbal approval" defeating the purpose of the new policy.

Criteria:

The DEP Attendance and Overtime Policy states in part:

"3.3 - Employees are designated as exempt or non-exempt based on the definition of "employee" set forth in West Virginia's Minimum Wage and Maximum Hours Standards, W. Va. Code §21-5C-1(f)(6). **Employees exempt from the overtime requirements of the Minimum Wage and Maximum Hours Standards will be determined by the Human Resources Manager."**

"3.4 - ... (c) Exempt employees are required to account for their work hours and are subject to the attendance regulations for the classified service."

"3.8 - Working overtime must be authorized by the employee's supervisor and division director... **before the hours are actually worked**, in accordance with agency practice.

(a) ... **Written preapproval must be submitted** to the payroll section within human resources before submitted overtime will be paid."

Part 516, Subpart A, Section 2 of the Fair Labor Standards Act (FLSA) of 1938, as amended, states in part:

"... (a) Items required. **Every employer shall maintain and preserve payroll or other records containing the following information** and data with respect to each employee to whom section 6 or both sections 6 and 7(a) of the Act apply:

(7) **Hours worked each workday and total hours worked each workweek** (for purposes of this section, a "workday" is any fixed period of 24 consecutive hours and a "workweek" is any fixed and regularly recurring period of 7 consecutive workdays).

(10) **Total additions to or deductions from wages paid each pay period** including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions."

Part 516, Subpart A, Section 5 of the Fair Labor Standards Act (FLSA) of 1938, as amended, states in part:

"Each employer shall preserve for at least 3 years:

(a) **Payroll records.** From the last date of entry, all payroll or other records containing the employee information and data required under any of the applicable sections of this part, and..."

W.Va. Code §5A-8-9(b), as amended, states in part:

“The head of each agency shall:

... (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities...”

Cause:

According to the Administrative Services Manager I over the Payroll Department, DEP does not have any record of the requested forms in the employee personnel files. From 2000 to 2004, DEP cleaned out and reorganized the personnel filing system and disposed of duplicate copies of documents. She further stated it is possible a few documents were inadvertently disposed of during this process. DEP also converted all files to an electronic filing system after 2004 and it is possible a document may not have been scanned. For missing time sheets, it is possible that the employee(s) did not have time to submit for the requested period. Also, one employee’s timesheets were not reviewed or approved by a supervisor, but personal desk calendars were provided.

The DEP Controller stated, “We will not have documentation to show preapproval of overtime prior to the implementation of our new procedures on 08/01/09. This procedure requires written approval prior to the overtime being worked, unless it is an emergency situation. Prior to that, supervisors approved or denied OT in whatever way they wanted. It could be presumed, that if the supervisor signed the overtime form and took no disciplinary action for working unauthorized overtime, then the employee's overtime was approved.”

Effect:

As a result of not providing proper supporting documentation, we were unable to determine if certain payroll transactions were correct for five employees, the exemption status of seven employees, if deductions taken were correct for five employees, and if nine employees overtime was actually preapproved. Not maintaining adequate supporting documentation increases the risk that employees may get paid for incorrect hours worked, may get paid an incorrect amount of overtime, may get overtime when they are exempt, may be over/underpaying for insurance premiums, may have incorrect tax withholdings, or may have other incorrect deductions. Also, without overtime being preapproved, it is possible employees could have abused overtime and cost the State more money than required by spending unnecessary excess time on jobs they were completing.

Recommendation:

We recommend that DEP comply with W.Va. Code §5A-8-9(b), as amended, the Fair Labor Standards Act (FLSA), and DEP internal policies. DEP should maintain adequate documentation to support payroll transactions and deductions and

require written preapproval by Division Directors of overtime before the hours are actually worked.

Spending Unit's
Response:

DEP agrees with this finding.

We believe that DEP has accurately and thoroughly reviewed the overtime status of our employees. In recent years HR completed a thorough review of the FLSA status of each and every employee. For employees who were clearly subject to overtime due to the nature of their position (Office Assistants, Secretaries, etc.) there was no form completed for the review, it was simply documented and verified in the payroll system. For all other employees a form was completed and made a part of their personnel files. Since that review we complete an FLSA exemption form on each new hire, transfer, promotion, or reinstatement and make it part of the employee's personnel file.

Likewise, the previous practice of leaving prior approval of overtime to individual supervisors has been changed so that overtime approval is a clearly defined and documented process.

For some employees whose payroll deductions lacked supporting documentation we simply did not print and file the electronic enrollment data for that employee. This information can be viewed in the electronic system and DEP matches withholding to PEIA billing so we did not find it necessary to print and scan each electronic enrollment form as it was approved.

Also, with the newest reporting from the ERIS timekeeping system, DEP is now better able to determine when timesheets are missing and to follow up with staff to assure submission of the timesheets.

Finding 17

Lack of Documentation Pertaining to Leave

Condition:

During our audit of DLR employees' sick and annual leave during fiscal years 2007-2009, we noted DEP could not provide the following leave documentation:

1. An employee's monthly Time and Activity Reports (time sheets) for fiscal years 2007 and 2008 and leave requests for fiscal years 2007-2009. DEP based this employee's leave records on personal desk calendars for the time where no time sheets could be provided and thus, we were unable to audit any of the ending balances for this employee.
2. Preapproval documentation such as Leave Requests (Application of Leave) or date of leave request and date of supervisor's approval for employees who took annual leave and compensatory time.
3. Four Approval Forms for two employees' compensatory time earned and five Approval Forms for five employees' holiday time earned.

Criteria:

W.Va. Code §5A-8-9(b), as amended, states in part:

"The head of each agency shall:

... (b) **Make and maintain records containing adequate and proper documentation** of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities..."

Legislative Rule, Title 143, Series 1, Section 14.3(c) states in part:

". . . The employee shall request annual leave in advance of taking the leave except as noted elsewhere in this subdivision. . . ."

Legislative Rule, Title 143, Series 1, Section 14.15 states in part:

"Leave Records - Each appointing authority shall maintain a current leave record of the agency's employees' accrued and used leave. . . ."

Section 3 of Fair Labor Standards Act states in part:

". . . The Act requires an agreement or understanding between the employer and employee prior to the performance of work."

The Sick and Annual Leave Procedures for West Virginia Department of Environmental Protection states in part:

"Compensatory/Holiday Time

. . . However, the Compensatory (Comp.) time must be preapproved by the employee's supervisor. . . . In order to use the time, the employee must go through the same procedures as when using annual leave."

Cause: According to the Administrative Services Manager I over the Payroll Department, one employee's time sheets were missing because the employee did not submit any time sheets and leave requests to the Payroll Section. She further stated DEP allows the supervisor discretion in determining how leave is preapproved. Some supervisors use verbal approvals and some email back and forth. She also stated she cannot locate the Approval Forms for compensatory and holiday time and she can only assume they were filed in a box which was somehow mislabeled.

We believe the lack of documentation resulted from a lack of management oversight over DLR employee leave. In addition, this appears throughout DEP as a whole and not only DLR.

Effect: As a result of not providing time sheets, we were unable to audit one employee's ending balances entirely. As a result of not providing leave requests, we were unable to determine if annual leave and compensatory leave was preapproved before taken. As a result of not providing Approval Forms for compensatory/holiday time, it was difficult to determine whether the corresponding employees had an accurate ending balance of annual leave, sick leave, compensatory time and holiday time for our audit period.

Recommendation: We recommend DEP comply with W.Va. Code 5A-8-9(b), as amended, and Legislative Rule, Title 143, Series 1, and Section 14 and maintain leave records and any documentation supporting the required preapproval process.

Spending Unit's Response: *DEP agrees with this finding.*

1. Due to agency wide implementation of the ERIS time reporting system and enhancements that allow continuous oversight by HR of timesheet and leave submission, procedures have been put in place to avoid these types of issues. The changes made have vastly enhanced the ability of the agency to manage leave more effectively.

2. DEP continues to allow supervisors to use their discretion in determining how they will pre-approve leave requests.

3. DEP now incorporates all documents into the electronic personnel filing system, so we do not anticipate further issues in this area. DEP also has consistent timesheet documentation within the ERIS timekeeping system, so that HR has access to all timesheets within the system going forward.

Finding 18 Lack of Segregation of Duties

Condition: During our preliminary planning & review of Fund 3347 - Voluntary Remediation Administrative Fund and Fund 3487 – Recycling Assistance Fund during fiscal years 2007 and 2008, we noted the following lack of segregation of duties:

1. Fund 3347 – The Administrative Secretary received monies and recorded the receipt in the accounting records. Approximately 37 checks totaling \$137,200.00 were received for voluntary remediation application fees and entered in the accounting without the proper segregation of duties.
2. Fund 3487 – The Environmental Resources Specialist 2 reviews and processes grant applications and forwards them to the Environmental Resources Specialist 3, her husband, for approval. Due to the nature of their relationship, these two employees should not be directly involved in the same work and their duties should be segregated.

Criteria: Management is responsible for establishing and maintaining effective internal controls over financial reporting. A fundamental concept of internal control is adequate segregation of compatible duties, the premise being that responsibilities for authorizing transactions, recording transactions, and maintaining custody of assets are assigned to different employees.

W.Va. Code § 5A-8-9(b), as amended, states in part:

“The head of each agency shall:

... (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities.”

Cause: DEP stated procedures would be developed to properly segregate the duties.

Effect: When there is a lack of segregation of duties, there is a greater risk that monies will be lost or misappropriated or that related parties will be able to influence each others’ decisions.

Recommendation: We recommend DEP comply with W.Va. Code §5A-8-9(b), as amended, and maintain adequate records by ensuring that duties are properly segregated.

Spending Unit’s

Response: *DEP agrees with this finding.*

1. DEP has drafted a new procedure for checks received for VRA Applications and forms to use for tracking these checks. This procedure will be implemented and all participants notified. This procedure will also address segregation of duties.

2. DEP is addressing the segregation of duty issues in Fund 3487 by transferring these duties from the ERS III to another employee in the sub-grant unit. The transition of these duties is currently underway.

Finding 19 **Lack of Documentation over Travel**

Condition: The DEP submitted two Travel Expense Account Settlement forms totaling \$553.48 that did not include a Rental Vehicle vs. Privately-Owned Vehicle (POV) calculation form when a personal or rental vehicle was used.

Criteria: The DEP Travel Policy states in part:

 “Rental Vehicle vs. Privately-Owned Vehicle–The traveler must use the Rental Vehicle vs. Privately-Owned Vehicle (POV) calculator to determine whether a rental vehicle or a personal-owned vehicle should be used. The calculator is located on the intranet under DEP Forms.
 The **traveler must attach a copy of the calculated sheet to their Travel Expense Account Settlement.**”

Cause: According to DEP, the POV calculation form should have been attached to the invoice. DEP also stated that there were misunderstandings on how to handle mileage reimbursements when the Governor’s Vehicle Policy Guidance came out and the Auditor’s Office processed the payments without the form.

Effect: By not attaching a POV calculation form, we are unable to determine whether it would be less expensive for the employee to use a rental vehicle or their own personal vehicle.

Recommendation: We recommend DEP comply with the DEP internal travel policy and attach a POV calculation form to all Travel Expense Account Settlement forms when a rental or privately-owned vehicle is used or revise the internal policy for clarity and change the wording from **all** Travel Expense Account Settlement forms to what the actual policy requires.

Spending Unit’s
Response: *DEP agrees with this finding.*

 This calculation was implemented in 2008. Accounts Payable staff has been instructed to assure that the policy is followed completely.

Finding 20 Lack of Documentation over Advertising & Promotional Transaction

Condition: During our audit of 35 advertising and promotional transactions during fiscal years 2007-2009, we were unable to determine if one transaction totaling \$100.00 was made in accordance with WV Code or legislatively approved rules and regulations because DEP was unable to provide supporting documentation.

Criteria: W.Va. Code §5A-8-9(b), as amended, states in part:

“The head of each agency shall:

... (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities...”

Cause: According to the Administrative Services Manager over Accounts Payable, it is the responsibility of the office p-card coordinator to compile all the needed documentation before it is placed in the fiscal file room for storage. The employees involved in this transaction are no longer employed by DEP.

Effect: As a result of not providing proper supporting documentation, we were unable to determine if a transaction totaling \$100.00 was made in accordance with WV Code or legislatively approved rules and regulations. If transactions are not made properly the financial statements may not be presented fairly.

Recommendation: We recommend DEP comply with W.Va. Code §5A-8-9(b), as amended, and maintain adequate documentation to support transactions.

Spending Unit’s
Response: *DEP agrees with this finding.*

Accounts Payable has a procedure in place to audit all p-card transactions. If there is missing documentation, it should now be caught and corrected before the information is filed.

Finding 21 **Weakness over Hospitality Forms**

Condition: During our audit of 18 hospitality expense transactions during fiscal years 2007-2009, we noted the following:

- One instance totaling \$118.03 where DEP could not provide a hospitality form for cakes purchased for Adopt-A-Highway Volunteer Appreciation Day, and
- One instance totaling \$9,169.49 where DEP prepared a hospitality form almost ten months after the hospitality event.

Criteria: The Expenditure Schedule Instructions states in part:

“042 – Hospitality: . . . A Request for Hospitality Form TMP 3.0 must accompany the invoice regardless of amount. . . .”

W.Va. Code §5A-8-9(b), as amended, states in part:

“The head of each agency shall:

... (b) **Make and maintain records containing adequate and proper documentation** of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities...”

Cause: According to the Administrative Services Manager 3 over Purchasing, the hospitality form could not be provided because the cardholder who purchased the cakes was unable to obtain the form from the program manager (retired). According to the Accounting Technician 3 who processes hospitality expenses, DEP had to wait for a revised invoice and thus, prepared a new hospitality form. She further stated that she does not know what happened to the initial hospitality form.

Effect: As a result of a missing hospitality form and an untimely prepared hospitality form totaling \$9,287.52, we were unable to determine if management was aware of and approved the hospitality expenses before they occurred. If a hospitality event occurs without management’s approval, DEP is still responsible to pay the invoice after the fact, which exposes the State to increased financial risk.

Recommendation: We recommend DEP comply with W.Va. Code §5A-8-9(b), as amended, and the Expenditure Schedule Instructions and prepare hospitality forms for hospitality expenses. Further, we recommend employees prepare and get management approval of hospitality forms prior to actual hospitality events.

Spending Unit’s

Response:

DEP agrees with part of this finding. The exception is noted below.

- *This form could not be located and the person associated with the event has retired.*

- *DEP Disagrees with this statement:*

A hospitality form was originally created for this transaction however it was misplaced while waiting on a corrected invoice and had to be recreated.

Finding 22

Recycling Assessment Fee Not Allocated or Reconciled

Condition: The Secretary of DEP did not allocate or deposit proceeds from the recycling assessment fee in accordance with statute during fiscal years 2007 and 2008. DEP has designated the State Tax Department to deposit and allocate the recycling assessment fee to the appropriate funds.** The recycling assessment fee is part of the solid waste assessment fee and is levied and imposed upon the disposal of solid waste at all solid waste disposal facilities in West Virginia, collected at the rate of two dollars per ton or part of a ton of solid waste.

In addition, DEP’s Budget Manager receives a WVFIMS document showing the allocation of the recycling assessment fee, along with a monthly solid waste tonnage report from the Tax Department. However, DEP does not confirm the amounts and allocations of the recycling assessment fee by recalculating the allocation.

**The team conducting the post audit of the Division of Water & Waste Management (DWWM) is auditing the actual allocations and adjustment calculations since the recycling assessment fee is part of the solid waste fees they are auditing. Any items noted during their audit will be included in the post audit report of the DWWM.

Criteria: W.Va. Code §22-15A-19(h), as amended, states in part:

“The Secretary shall allocate the proceeds of the fund as follows:
...Fifty percent of the total proceeds are used to provide grants to assist municipalities, counties, and other interested parties in the planning and implementation of recycling programs, public education and recycling market procurement efforts...”

W.Va. Code §5A-8-9(b), as amended, states in part:

“The head of each agency shall:
... (b) **Make and maintain records containing adequate and proper documentation** of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities...”

Cause: DEP stated it is more efficient to allow the State Tax Department to allocate the recycling assessment fee to the appropriate funds.

Effect: DEP is in noncompliance with the W.Va. Code, which could lead to a greater risk of monies collected from the recycling assessment fee being allocated incorrectly.

Recommendation: We recommend DEP comply with W.Va. Code §22-15A-19(h), as amended, and allocate monies collected from the recycling assessment fee as stated. If DEP wants the Tax Department to continue allocating the fee, we recommend DEP

seek a change in statute and perform regular reconciliations of the recycling assessment fee to ensure proper allocations. We further recommend DEP comply with W.Va. Code §5A-8-9(b), as amended, and maintain adequate records.

Spending Unit's
Response:

DEP disagrees with this finding.

The Department will seek West Virginia Code interpretation from its legal division and input from the West Virginia Tax Department to determine if a change in statute is necessary. We will then proceed with the most efficient and economical means in order to allocate the proceeds from the monthly landfill fees collected and remitted to the West Virginia Tax Department from landfill owners and operators. If it is determined that the Tax Department should continue to allocate the proceeds, then a change in statute will be needed in order for code 22-15-11 and 22-15A-19(h) to consistently state this. Any action will require communication and agreement with representatives of the Tax Department.

Until it is determined whether the West Virginia Tax Department should continue to allocate the above mentioned proceeds, the department will implement monthly reconciliations in order to assure that allocations are correct on future collections.

Finding 23**Lack of Effective Monitoring over Billing and No Enforcement of Unpaid Fees and Late Fees**

Condition:

During our review of the Leaking Underground Storage Tank Response Fund (Fund 3217 – LUSTR) during fiscal years 2007 and 2008, we noted the following internal control weaknesses over monitoring and late fees:

1. Lack of Review of Tank Owners' Information for Billing System

DEP did not ensure tank owners' information was correctly entered into the Environmental Resources Information System (ERIS). This system is used to generate invoices to tank owners for Underground Storage Tank (UST) annual registration fees. Based on inquiry, we noted ERIS does not always charge registration fees for owners in the database for some unknown reason.

2. No Segregation of Duties over Monitoring of Unpaid Fees

The Environmental Technician who maintained the UST database also prepared a list of tank owners without current registrations. However, the list was not reviewed or approved by the Environmental Resources Program Manager or the designated authority for our audit period. Each July, this list is submitted to known Petroleum Carriers to notify them of tank owners who did not pay.

3. No Enforcement of Unpaid Fees & Late Fees for Active and Closed Tanks

Based on the documentation provided, it became apparent that DEP did not enforce or pursue collection of unpaid fees and late fees for active USTs as well as for USTs that became closed during fiscal years 2007 and 2008. However, due to the scope limitation over Fund 3217 and the inability of DEP to provide a complete listing of all tanks in the State, we were unable to quantify the exact number of instances.

4. No Management Approval of Adjustments

When DEP posts the cash receipts for the UST registration fees into ERIS, the invoice amount does not always match the amount of money received. If ERIS shows any matching errors, the Accounts Receivable section contacts the Environmental Technician to correct/resolve the errors via an adjustment. However, the Environmental Technician does not obtain approval from the Program Manager or other designated authority prior to or subsequent to the adjustment(s).

Criteria:

W.Va. Code §22-17-20(a), as amended, states in part:

“(a) the secretary **shall collect annual registration fees** from owners of underground storage tanks. . .”

W.Va. Code §22-17-21(a), as amended, states in part:

“(a) each underground petroleum storage tank owner within this state **shall pay an annual fee.** . .”

W.Va. Code §22-17-6(b), as amended, states in part:

“(1) A requirement for a **yearly registration fee** for underground storage tanks; . . .”

Legislative Rule, Title 33, Series 31, Section 4.4 states in part:

“(c) Any errors made in the calculation of assessment fees, whether by the department or as a result of inaccurate information submitted by the owner or operator. . . must be corrected within one (1) year of the due date posted on the invoice. . .”

Cause: According to the Environmental Resources Program Manager, the Environmental Technician’s work was overseen by the former Environmental Resources Program Manager during the audit period.

Regarding no approval for adjustments, the Environmental Resources Program Manager stated the Environmental Technician can usually readily determine how the payment split should be made and works directly with the Accounts Receivable Section to resolve the issue. This does not require any approval on the Environmental Resources Program Manager’s part, as there is not an actual error in the billing. When there is a question that involves a true error, the Environmental Technician discusses it with the Environmental Resources Program Manager and gets approval before any adjustments are made to the invoice.”

Effect: As a result of not reviewing information entered into the UST ERIS database, DEP cannot ensure that all active tanks were billed properly. As a result of not monitoring and enforcing collections of all unpaid fees and late fees, the State may not be receiving money it is due. Also, both DEP and UST owners are in noncompliance with statute. As a result of the lack of segregation of duties over monitoring and not obtaining approval from a designated authority for adjusting invoice amounts, it is possible for the employee who enters the tank owner into the database to adjust off a tank owner’s invoice and remove the owner’s name from the list of unpaid registration fees given to the Petroleum Carriers.

Recommendation: We recommend DEP comply with W.Va. Code §22-17-20(a) & 21(a), as amended, §22-17-6(b), as amended, and Legislative Rule, Title 33, Series 31,

Section 4.4 and implement effective procedures to ensure UST information is entered into ERIS correctly for adequate billing of registration fees, properly segregate incompatible duties, collect unpaid fees timely, enforce late fees, and have management approval for all adjustments.

Spending Unit's
Response:

DEP agrees with most of this finding. Exceptions are noted below.

1. DEP disagrees with this statement:

Procedures are in place to review that the owners' information was correctly entered into ERIS. The inspectors receive the notification forms and are instructed to review for accuracy. Additionally, the Program Manager also reviews for accuracy of the information. The Program Manager's review is documented by initialing the forms. Then the Environmental Teach (ET) reviews the information and enters the information into ERIS. Inaccurate or incorrect information triggers a contact to the owner for clarification. During the process of preparing invoices for printing, the list of invoices is reviewed for accuracy by the ET, with oversight and selected review by the Program Manager. Any questionable information is reviewed in more detail and resolved prior to issuing invoices.

2. Procedures have been implemented whereby the ET and the Program Manager both review the list of tank owners who had not paid fees, and confirm that the status was correct, prior to issuing the list to petroleum carriers.

3. DEP disagrees with this statement:

At minimum, owners are prevented from receiving product into USTs for which fees had not been paid, via notifying the petroleum carriers. Petroleum Carriers are restricted from delivering their product to owners that have not paid their registration fees. Enforcement actions are taken to compel compliance with payment of fees.

4. A procedure has been implemented whereby the ET and the Program Manager began documenting the reviews of any errors on the UST side of the invoicing and the Program Manager signs off on and approves any adjustments.

Finding 24

Noncompliance with Shiloh Trust Agreement

Condition: During our audit of the Shiloh Environmental and Landfill Trust Fund (Fund 3488) during fiscal years 2007 and 2008, we noted the now retired Controller for DEP did not enforce duties to be performed by the Shiloh River Corporation in accordance with the trust agreement. The instances are listed below:

1. According to the trust agreement, the Shiloh River Corporation was responsible for maintaining and operating the Shiloh Landfill, submitting annually an estimate of anticipated operation and maintenance costs for the following fiscal year, and submitting an annual invoice reflecting actual costs for the operations and maintenance of the land. However, the President of Shiloh River Corporation submitted only one estimate for the costs of operations and maintenance in 2005 and then did not submit any yearly estimates or invoices for the four subsequent years.
2. The WVDEP did not perform any inspections during 2005 and 2006 to ensure that the Shiloh Landfill Corporation maintained the landfill properly and in accordance with the Closure Plan of the trust agreement.
3. According to the inspection reports for 2007, 2008 and 2009, DEP inspectors visited the Shiloh Landfill and sent several violation notices to the Shiloh River Corporation. However, DEP did not enforce any other actions, such as a penalty assessment, when the Shiloh River Corporation did not correct most of the violations.
4. DEP did not appoint a successor Citizen Trustee when it became aware that the President of Shiloh River Corporation was unable to fulfill his duties and the Chief Executive Officer of the Shiloh River Corporation failed to appoint a successor.

Criteria: Section 3.01 of the Shiloh Landfill Environmental Trust Agreement states in part:

“... (a) Citizen Trustee... If the chief executive officer of the Shiloh River Corporation shall **fail to appoint** a successor Citizen Trustee **within ninety days** of the date of resignation, removal, death or incapacity of the Citizen Trustee, the **Secretary** of the WVDEP **shall appoint** an individual as successor Citizen Trustee who shall serve in accordance with the terms of this instrument...”

Section 4.02 of the Shiloh Environmental Trust Agreement states in part:

“... Determination of Amount of Short-Term and Long-Term Operation and Maintenance Costs. The Citizen Trustee shall provide an estimate . . . for the fiscal year within thirty (30) days after execution of this trust agreement, and thereafter, shall timely provide to the Government Trustee, at least annually, a statement of the operation and maintenance costs paid during each fiscal year and shall also timely provide to the Government Trustee an estimate of anticipated operation and maintenance costs for the following year.”

The Certificate of Delegation of Responsibility under the Shiloh Landfill Environmental Trust states in part:

“This document serves to give notice . . . the Secretary of the WVDEP and the “Government Trustee” under the Shiloh Landfill Trust Environmental Agreement, hereby designates the Controller for the WVDEP, as the “Delegate Trustee” having authority with **full power to act** for me all necessary duties under the Shiloh Landfill Trust Environmental Agreement.”

Cause: DEP stated that the President of the Shiloh River Corporation was unable to maintain the Shiloh Landfill. We believe DEP did not act in its full power to ensure compliance with the trust agreement.

Effect: DEP was in noncompliance with the trust agreement, which could possibly cause harm to the public or the environment.

Recommendation: We recommend DEP comply with the trust agreement and enforce any appropriate actions to ensure the Shiloh River Corporation comply with its part of the trust agreement.

Spending Unit’s
Response:

DEP does not fully agree with this finding.

1./2./4. DEP’s Office of Legal Services has been in contact with counsel for the Shiloh River Corporation, and DEP is evaluating options to address a path forward with regard to the trust and trust agreement. There are extenuating circumstances that have affected this effort.

3. It should be noted that a penalty assessment for violations noted at any given facility is not necessarily the appropriate measure to take, and is a matter of DEP’s discretion.

DEP also disagrees with the “effect” reflected in the finding, that possible harm to the public or environment could result.

Finding 25

Inaccurate Listing of Vehicles and Mobile Equipment Units

Condition: Upon comparison of the DEP list of all vehicles and mobile equipment units with the BRIM database for November 2009, we noted DEP did not maintain updated lists in neither the DEP list nor in the BRIM database. BRIM requests DEP submit changes in the BRIM database annually by completing an electronic state renewal questionnaire. However, DEP can update the database whenever the status of any vehicle or mobile equipment unit changes. DEP only updates the list on October 20th of each year.

As a result of not maintaining an updated list of all vehicles and mobile equipment units, we noted DEP did not add, delete or enter correctly V.I.N. numbers for 34 vehicles and mobile equipment units.

(a) We noted seven vehicles were not added, two mobile equipment units were not removed when they were transferred to Aviation, three mobile equipment units were duplicated in BRIM’s database, and one mobile equipment unit was duplicated on DEP’s list and in BRIM’s database.

(b) We also noted 15 instances where the V.I.N numbers of five vehicles and ten mobile equipment units were not accurate on neither DEP’s list nor the BRIM database and DEP does not know the correct V.I.N. number, three instances where one vehicle and two mobile equipment units were duplicated, and three instance where mobile equipment units were not added on DEP’s list.

Criteria: The W.Va. Code § 5A-8-9(b), as amended, states in part:

“The head of each agency shall:
... (b) **Make and maintain records containing adequate and proper documentation** of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities...”

Cause: DEP was unaware of any errors, duplicates or non-added items on the DEP list of all vehicles and mobile equipment units because DEP did not perform any reconciliation of the DEP list to the insured vehicles and mobile equipment units in the BRIM database.

Effect: Since BRIM receives its information from DEP, if all vehicles and mobile equipment units are not documented on an updated list and are subsequently not entered into the BRIM database accurately, BRIM will calculate premium amounts based on inaccurate information and DEP may be paying too little or too much for all agency owned and leased vehicles and mobile equipment units.

Recommendation: We recommend DEP maintain adequate records in accordance with W.Va. Code §5A-8-9(b), as amended. We further recommend DEP reconcile the DEP list to the BRIM database annually and maintain a current updated list of all vehicles

and mobile equipment units so BRIM will have accurate information to calculate premium amounts. Although BRIM only requires an updated agency list once a year, agencies are able to input updates/changes all year long. Therefore, we recommend DEP input any updates into the BRIM database as they occur.

Spending Unit's
Response:

DEP does not fully agree with this finding.

The DEP agrees that there were some discrepancies between the DEP vehicles and mobile equipment list and the BRIM database for November 2009. Due to the fact that the DEP Inventory system only requires items over \$1,000 and some of the mobile equipment for the agency does not meet this criteria, DEP implemented a mobile equipment list in 2009 to cover these items. This list gets reviewed annually during the physical inventory that the agency conducts and items are added, corrected, and removed at that time.

(a) The seven vehicles that were not added were not received until after the annual renewal was submitted for the year. Corrections have been made.

(b) Serial numbers will be verified during the physical inventory and corrected. All serial numbers that were just data entry errors have been fixed in the BRIM's database.

DEP will continue to audit the DEP vehicles, mobile equipment list and BRIM data base annually during the renewal period.

DEP disagrees with the Effect. BRIM provides blanket coverage to the Agency so that all vehicles are covered. The premium paid is calculated based on the annually updated information in the BRIM database. The size of DEP's fleet does not increase during the year, therefore the premium calculations would remain the same.

**WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF LAND RESTORATION**

SUPPLEMENTAL INFORMATION FUND LISTING

GENERAL REVENUE FUND

0273 General Administration Fund

General revenue funds for DEP administration.

SPECIAL REVENUE FUNDS

3023 Hazardous Waste Management Fee Fund

Other collections, fees, licenses, income & investment earning to provide state funds for responding to hazardous waste emergencies.

3024 Air Pollution Education and Environment Fund

Fees, collections and other income to provide assurance of compliance with Air Pollution Control and Federal Clean Air Act.

3206 Dam Safety Fund

Application and registration fees, interest or surcharge and civil penalties for reviews, inspections and remedial actions to enforce.

3217 Leaking Underground Storage Tank Response Fund

Annual fees and interest to assure adequate response to leaking underground tanks.

3220 Groundwater Protection Fund

Groundwater protection fees & interest to administer & enforce provision of Groundwater Protection Act.

3222 Groundwater Remediation Fund

Groundwater remediation fees not to exceed \$250,000 in two year period, civil penalties & interest for clean-up and remedial action resulting from contamination of groundwater or related environment.

3255 Performance Bond Monongalia County Landfill Fund

Performance bond or letter of credit held to meet requirements of law in relation to landfill laws of the state.

3301 Operating Permit Fees Fund

Sales and surface mining and prospecting permit fees for operating and inspection expenses.

3303 Performance Bond Fund

Cash, collateral securities or certificates & interest received to insure faithful compliance with laws.

3310 Nonpoint Source Program Fund

Federal funds for water quality planning and management.

3312 Special Reclamation Water Quality Fund

Coal fees from fund 3321, land sale & gas royalties for water quality ground improvements not to exceed 25% for clean-up and remedial action resulting from contamination of groundwater or related environment.

3314 Performance Bond Investments Clearing Fund

Cash or collateral securities received in lieu of corporate surety from well operators conditioned on full compliance with all laws & regulations.

3317 Special Reclamation Administration Fund

Transfers from fund 3321 for reclamation administration not to exceed 10% of the total annual assets of fund 3321.

3321 Special Reclamation Trust Fund

Bond forfeitures, fines, investment income & special reclamation tax from fund 7057 for reclamation of lands subjected to surface mining operations.

3322 Oil and Gas Reclamation Trust Fund

Special reclamation fees, civil penalties bond forfeitures recovery costs from preventing waste of gas to be used to plug all abandoned or improperly plugged wells.

3323 Oil and Gas Operating Permits Fund

Reclamation & UIC permit fees for processing applications in relation to drilling oil & gas wells for carrying out provisions of Chapter 22.

3324 Mines and Minerals Operations Fund

2 cents per ton coal tax from fund 7057 & interest to carry out statutory duties relating to the enforcement of environmental regulatory programs for coal industry.

3325 Underground Storage Tank Administrative Fund

Registration fee, penalties, forfeitures & interest to defray costs of administration.

3326 Hazardous Waste Management HG 1479 Fund

Hazardous waste permit fees for hazardous waste management throughout the state.

3327 Water Quality Management Fund

Water pollution control permit fees, donations, fines and penalties to review applications & activities.

3328 Closure Cost Assistance Fund

Water disposal fees from 3332, sales & interest to provide assistance for the closure of landfills which are to cease operations by closure deadlines.

3329 Water Pollution Control Revolving Fund

Federal and state funds & interest to administer fund & to make loans to local governments. To finance costs of pollution control projects.

3331 Hazardous Waste Emergency & Response Fund

Assessment fees, penalties, interest & transfers from fund 3332 to provide for planning & response to hazardous waste emergencies.

3332 Solid Waste Reclamation & Environmental Response Fund

Waste disposal fees and penalties for reclamation, clean-up & remedial actions due to improper solid waste disposal.

3333 Solid Waste Enforcement Fund

Solid waste assessment fee & transfers from Fund 3332 for expenses in dealing with solid waste enforcement.

3336 Air Pollution Control Fund

Permit fees and penalties for operating expenses of air quality control Comm.

3337 Gifts & Donations Fund

Gifts, donations and administrative penalties for the conservation, improvement & development of water resources in the state.

3338 Operating Fund – Transportation/Aviation 3218 Underground Storage Tank Insurance Fund

Annual financial responsibility assessment, interest & transfer from fund 2364 to satisfy financial responsibility requirements.

3340 Environmental Laboratory Certification Fund

Annual certification fees to monitor laboratories conducting waste & wastewater tests & analyses not to exceed an annual program aggregate of \$150,000.

3342 Water Pollution Revolving Fund – Admin Fee

Transfers from fund 7250 & interest to administer revolving fund.

3347 Voluntary Remediation Administration Fund

Collections, fees and other income to administer and monitor the Voluntary Remediation Fund.

3349 Stream Restoration Fund

Fees, collections, other income & investment earning to ensure surface mine operations will not affect the state's waters or wetlands where wildlife habitat exists.

3484 Highway Litter Control Program

Fees, collections & other income to provide funds for the WV Adopt-A-highway litter clean up.

3486 Litter Control Fund

Fees, collections & other income to assist in costs of collecting roadside litter.

3487 Recycling Assistance Fund

Fees, collections & other income to administer grants to county and local governments to establish recycling programs.

3490 Mountain Top Removal

Fees, collections, other income to enforce the blasting laws & protect the property & citizens of WV.

3494 Quarry Inspection and Enforcement Fund

Other collections, fees, licenses & interest income to administer the Quarry Inspection & Enforcement Fund.

FEDERAL FUNDS

8708 Consolidated Federal Funds General Administration Fund

Federal funds and interest income to administer and develop energy resources in West Virginia.

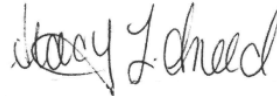
8796 Acid Mine Drainage Abatement & Treatment Fund

Federal funds, investment earnings and interest for acid mine drainage abatement, treatment plans and for administrative and personnel expenses associated with the program.

STATE OF WEST VIRGINIA
OFFICE OF THE LEGISLATIVE AUDITOR, TO WIT:

I, Stacy L. Sneed, CPA, CICA, Director of the Legislative Post Audit Division, do hereby certify that the report appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said report.

Given under my hand this 10th day of January 2011.



Stacy L. Sneed, CPA, CICA, Director

Legislative Post Audit Division

Copy forwarded to the Secretary of the Department of Administration to be filed as a public record. Copies forwarded to the West Virginia Department of Environmental Protection; Governor; Attorney General; and State Auditor.